CONSTRUCTION MANAGER-AT-RISK
FOR
AUSTIN STUDIOS EXPANSION PROJECT
SOLICITATION NO. CLMA019

ISSUE: AUGUST 17, 2015

DUE: SEPTEMBER 23, 2015

PRIOR TO: 3:00 PM

DELIVER TO:

CONTRACT PROCUREMENT DIVISION
CONTRACT MANAGEMENT DEPARTMENT
ATTN: SOFIE JOHNSON
105 W. RIVERSIDE DRIVE, SUITE 210
AUSTIN, TX 78704

AUSTIN STUDIOS EXPANSION PROJECT
CONSTRUCTION MANAGER-AT-RISK
REQUEST FOR QUALIFICATIONS

SECTION 00100CMR

1. **OVERVIEW**
2. **PROJECT INFORMATION, BUDGET, CONTRACT TIME**
3. **SOLICITATION DOCUMENTS**
4. **DUE DATE FOR REPSONSE**
5. **AUTHROIZED CONTACT PERSONS**
6. **ANTICIPATED SELECTION SCHEDULE**
7. **MANDATORY PRE-RESPONSE MEETING**
8. **SITE VISIT**
9. **VENDOR REGISTRATION**
10. **MBE/WBE PROCUREMENT PROGRAM**
11. **PREPARATION OF RESPONSES**
12. **MINOR INFORMALITIES**
13. **SELECTION OVERVIEW**
14. **AWARD AND EXECUTION OF CONTRACT**
15. **CONFLICT OF INTEREST**
16. **WITHDRAWAL OF RESPONSE**
17. **EXCEPTIONS, ADDITIONS, QUALIFICATIONS**
18. **REJECTION OF PROPOSAL**
19. **BONDS AND INSURANCE REQUIREMENTS**
20. **PREVAILING WAGE COMPLIANCE**
21. **INSPECTION, CONSTRUCTION MATERIALS AND BUILDING COMMISSIONING**
22. **OPPORTUNITY TO PROTESS**
23. **FEDERAL CONTRACTING REQUIREMENTS**
24. **EVALUATION CRITERIA**

SECTIONS

00300CMR:	Cost Proposal Form
00400CMR:	Statement of Experience & Attachments
00405:	Certificate of Non-Suspension or Debarment
00410:	Statement of Safety Experience
00415CMR:	Safety Information Form
00440:	Affidavit - Prohibited Activities
00460CMR:	Statement of Responsibility (SMBR Program)
00461:	Local Business Presence Identification Form
00475:	Nonresident Provisions
00500CMR:	Agreement
00610:	Performance Bond
00620:	Payment Bond
00630:	Nondiscrimination Certificate
00631:	Title VI Assurances
00650:	Certificate of Insurance
00670:	Sales Tax Exemption Certificate
00680:	Non-Use of Asbestos Affidavit (Prior to Constr.)
00681:	Non-Use of Asbestos Affidavit (After Constr.)
00700CMR:	General Conditions of the Contract
00810CMR:	Supplemental General Conditions
00830:	Wage Rates and Payroll Reporting
01010 :	Summary of Work

Appendix 1 - Development Agreement

END

1. OVERVIEW

The Austin Film Society (AFS) (Owner) and City of Austin (City) desire to select a Construction Manager-at-Risk firm through a two-step evaluation and selection process for the Austin Studios Expansion project. This solicitation complies with applicable City Policy and State of Texas law, including Texas Government Code Title 10, Subtitle D, Chapter 2269. The Owner will select the successful Offeror that offers the best value to the City based on the published Evaluation Criteria and on its final ranking.

In this Request for Qualifications, "**Owner**" means the "Austin Film Society," of Austin, Inc., a Texas 501(c)(3) non-profit corporation, doing business as Austin Film Society. While the City is the fee owner of the real property and improvements, which are the subject of the contract for the Austin Film Society Austin Studios Expansion Project, the City has leased to Austin Film Society the property and improvements under that certain Lease dated July 22, 2009, as amended by instruments dated March 1, 2013 and November 30, 2014, and has granted the Austin Film Society the right to improve the property under that certain Agreement for Development and Construction of New Cultural Facilities for Public Use Funded in Part with Bond Funds dated July 22, 2014 ("the Development Agreement"). Pursuant to the Development Agreement between the City of Austin and the Austin Film Society, the Austin Film Society has agreed to use the "City's standard construction agreement in contracting with the Contractor." Any reference to "City" or "City of Austin" as the "Owner" in the Contract Documents will be understood to mean the Austin Film Society as "Owner", except for those references which refer to the City as a separate regulatory entity or as a participating entity with separate approval authority. A common sense interpretation will be given to the term "Owner" in order to provide for the efficient administration and management of the Contract and Project. In any case, all documents executed pursuant to the Agreement. The improvements to be constructed under the Contract for this Project pursuant to the Agreement constitute public works construction, being the permanent improvement.

Step One, Request for Qualifications: Owner will process responses to Step One expeditiously. OWNER will evaluate and rank each responsive submittal with respect to the published Evaluation Criteria contained in this solicitation. Step One evaluations will result in Owner qualifying (or shortlisting) no more than five (5) Offerors to respond to Step Two, Request for Proposals.

Step Two, Request for Proposals: In Step Two, the shortlisted Offerors will be formally notified that they have been shortlisted to provide additional information as determined by the OWNER, including proposed fees and pricing for fulfilling general conditions. The final number of Offerors invited to be interviewed will depend on the total combined scores and ranking following evaluations of Step Two written responses.

2. PROJECT INFORMATION, BUDGET, AND CONTRACT TIME

Below is a summary of information related to this Solicitation. Potential Offerors are cautioned to refer to all other sections of the Solicitation Documents, Clarifications and/or Addenda for further details. Evaluation Criteria are specified below.

Owner is requesting documentation of qualifications and other relevant information for Construction Manager-at-Risk services to perform all Work required for the following Project:

Project Name:	**Austin Studios Expansion**
Project Location:	**1901 E. 51st Street, Austin, Texas 78723**
Solicitation Number:	**CLMA019**

The Construction Cost Limitation for this project is $3,800,000. The selected Construction Manager-at-Risk (CMR) will be expected to provide pre-construction, construction and post-construction services. AFS is positioned to renovate its campus into a more productive space for the film and creative media industry. AFS' design team has only begun its efforts to produce three site development options and preliminary engineering reports that ensure the most efficient use of the PROPERTY and placement of infrastructure for future growth. Construction is likely to include the following elements: (1) campus connectivity and security; (2) renovation of the former National Guard Armory; (3) infrastructure improvements; and (4) LEED certification. See Section 01010, Summary of Work for a detailed description of the Work.

Contract Time is of the essence. All Work shall be substantially completed no later than February 28, 2017 from written Notice to Proceed with Preconstruction Phase Services, subject to change as the Pre-Construction Phase progresses and the schedule becomes more defined.

3. SOLICITATION DOCUMENTS

Solicitation Documents are available on Vendor Connection and may be located as an attachment under the Solicitation Number:

https://www.austintexas.gov/financeonline/vendor_connection/index.cfm

4. DUE DATE FOR RESPONSES

The Offeror must submit one (1) original signature copy of their response, six (6) duplicate copy and one (1) digital/electronic version on CD or Flash Drive in a sealed container and it must be received at the following location prior to the date and time set forth below:

Sofie Johnson
Contract Procurement
Contract Management Department
Sofie.johnson@austintexas.gov
(512) 974-9143
105 W. Riverside Drive, Suite 210
Austin, TX 78704

DUE DATE:	**September 23, 2015**
PRIOR TO	**3:00 PM**

RESPONSES RECEIVED ON OR AFTER THE DATE AND TIME STATED ABOVE WILL NOT BE ACCEPTED FOR EVALUATION. The time stamp clock located in Suite 210 CMD's Reception Area is the time of record and is verified daily with www.time.gov, the Official U.S. time.

It is the sole responsibility of the Offeror to ensure timely delivery of its Response. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service.

At each step, the Owner will receive, publicly open, and read aloud the names of the Offerors. At Step Two, the Owner will also read aloud the fees, prices, stated in the Proposal document as applicable.

5. AUTHORIZED CONTACT PERSONS

The persons listed below may be contacted for information regarding this solicitation. If the Offeror contacts any other AFS or City employee, including Austin City Council Members and/or members of City Boards and Commissions, the Offeror may be found in violation of 20111110-052, dated November 10, 2011, regarding Anti-Lobbying and Procurement. The Ordinance may be viewed at:

http://www.cityofaustin.org/edims/document.cfm?id=161145.

PROJECT MANAGER:	**Phillip Buterbaugh**	**512-347-3657**
CONTRACT PROCUREMENT REP.:	**Sofie Johnson**	**512-974-9143**

6. ANTICIPATED SELECTION SCHEDULE

The final selection of the CMR firm for this project is anticipated to be completed by December, 2015.

Owner will submit a recommendation to City for authorization to negotiate and execute a contract with the top-ranked firm. If Owner is unable to negotiate a satisfactory contract with the top-ranked firm within 45 calendar days, Owner will formally end negotiations with that firm. The Owner will then proceed to negotiate a satisfactory contract with the next ranked firm in the order of the selection ranking, until a contract is reached or all negotiations end, provided that Owner, in its complete discretion, may elect to extend the time for negotiations with any firm for an additional period of time.

7. MANDATORY PRE-RESPONSE MEETING

A **MANDATORY** Pre-Response Meeting will be held on August 31, 2015 10:00 am at AFS Bungalow C (Screening Room), Austin Studios, 1901 E. 51st Street Austin, Texas 78723. From 51st Street, enter Austin Studios at Gate 2; call AFS front desk from the gate to gain entry to the complex; follow signs to park near Bungalow C (Screening Room).

Offerors must attend the mandatory Pre-Response Meeting to ensure their understanding of Owner's Solicitation request, contracting requirements, and MBE/WBE Procurement Program requirements. To be qualified to submit a Response, an authorized agent of the Offeror must attend the Pre-Proposal Meeting. An authorized agent is defined as a knowledgeable person who is on the Offeror's payroll at the time of submission. Offerors must arrive and sign-in within fifteen (15) minutes of the scheduled start time of the meeting; otherwise, the Offeror will not be allowed to submit a Proposal for the project.

8. SITE VISIT

A **MANDATORY** tour of the Site will be conducted immediately following the Pre-Proposal Meeting. Depending on the number of people interested in attending the tour, space may be limited to three (3) representatives from each firm. The tour should take no more than 1 hour. This will be the only opportunity offered to tour the Site.

9. VENDOR REGISTRATION

All Offerors and Offeror's Subconsultants and Subcontractors must be registered with the City prior to execution of a contract. Offerors are responsible for ensuring that their Subconsultants and Subcontractors are registered as a vendor with the City. Registration can be done through the City's on-line Vendor Registration system. Log on to the site below and follow directions as required: https://www.austintexas.gov/financeonline/vendor_connection/index.cfm

10. MBE/WBE PROCUREMENT PROGRAM

City Code Chapter 2-9A, as amended, establishes a Minority-owned and Women-owned Business Enterprise (MBE/WBE) Procurement Program. The aim of this program is to promote MBE and WBE participation in all areas of the City's procurement, through its prime contract awards and subcontracts, and to afford MBEs and WBEs an equal opportunity to compete for all City contracts. In particular, this program encourages contractors to provide opportunities to certified MBEs and WBEs for subcontracts or related contracts. A "Subcontractor" is defined by the Ordinance and for the purposes of this form is any person or Business Enterprise providing goods, labor, or services to a contractor if such goods, labor, or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City. In accordance with City Code Chapter 2-9A, as amended, goals for MBE and WBE participation differ from contract to contract, based on the type of contract, the availability of MBEs and WBEs to perform the functions of the contract, and other factors.

For the selection of a Construction Manager-at-Risk general contractor, the City's Small & Minority Resources Department ("SMBR") will issue goals once the scopes of work have been identified during the design, pre-construction, and construction phases of the project. The Construction Manager at Risk general contractor must comply with both: (1) the City of Austin's Third Party Resolution (20120112-058), and (2) the Agreement between the City of Austin and the Austin Film Society relating to the development and construction of new cultural facilities by the Austin Film Society for public use funded in part with bond funds, which was executed on July 22, 2014 (the "Development Agreement").

The City and Owner have determined that subcontracting opportunities will arise during the Construction Phase of this project; however the specific scopes of work and the magnitude of the scopes of work cannot be determined until the design for the project has been completed. When the design documents are sufficiently completed, the City will establish appropriate MBE/WBE goals, and the Construction Manager-at-Risk firm shall submit a MBE/WBE Compliance Plan meeting the goals or documentation detailing their Good Faith Efforts to meet the established MBE/WBE goals.

11. PREPARATION OF RESPONSES

11.1 Preparation. Responses must be printed on letter-sized (8-1/2" x 11") paper, submitted in a binder and divided by tabs for ease of reference. Responses are required to be submitted in multiple, complete copies as required. The Offeror must submit one (1) original signature copy of their response, six (6) duplicate copies and one (1) digital/electronic version on CD or Flash Drive. Proposals must include all specified items detailed in Section 24, Evaluation Criteria below, and must be submitted in accordance with all provisions of the Solicitation Documents.

11.2 Volume of Information. Limitations on volume of requested information apply equally to single firms and joint venture Offerors, regardless of the number of firms partnering in the joint venture. The individual firms of a joint venture are scored separately on the Evaluation Criteria. Their individual scores are then combined based on the proportion of control that each firm has in the joint venture.

11.3 Sealed Container. Responses must be submitted in a sealed container marked on the outside with the Offeror's name and address, solicitation number, and due date and time. Proposals that are not submitted in a sealed container will not be considered. Electronic only or facsimile Responses will not be accepted. Responses may be mailed or delivered (during normal business hours in person or by Federal Express, Express Mail or other delivery service) to the address referenced above.

11.4 Executive Summary. Responses must include an Executive Summary prefacing the Response. The Executive Summary should be no more than three (3) pages and should give a summation of the Response in concise terms.

11.5 Content. Each Response should be prepared simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of this solicitation, not to exceed 50 pages, and each copy spiral bound Elaborate bindings, colored displays, promotional materials and so forth are not desired. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the Owner's needs.

11.6 Modifications to Responses. Responses may be modified in writing at any time prior to the due date and time. The person signing the Proposal shall initial any modifications made.

11.7 Professional Services. Offeror shall secure any required services that are defined as professional services under Texas Government Code Title 10, Subtitle F, Chapter 2254, Subchapter A: PROFESSIONAL AND CONSULTING SERVICES, also known as the Professional Services Procurement Act (for example: registered professional land surveyors, professional architects and professional engineers) using the qualifications based selection process prescribed by that Chapter. (Note: It is a violation of State Law to solicit Bids for professional services.)

11.8 Disclosure of Proprietary Information. All materials submitted to Owner become public property and are subject to Texas Government Code Title 5, Subtitle A, Chapter 552, also known as the Texas Public Information Act. If Offeror does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked proprietary at time of Proposal and Owner will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed; however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

Responses will be reviewed in a manner that avoids disclosure of the contents to competing Offerors and keeps the contents confidential during negotiations. Until the negotiations are completed, only the number, identity, fees and prices of the Offerors' Responses will be made available to the public.

Under Texas law, information relating to Responses may be kept confidential until a contract has been awarded. Owner shall not release information relative to this Solicitation during the Proposal evaluation process or prior to contract award.

11.9 Costs of Preparing the Response. All cost directly or indirectly related to preparation of a Response to this Solicitation or any oral presentation required to supplement and/or clarify a Response, which may be required by Owner, shall be the sole responsibility of the Offeror.

11.10 Further Information. Information may be secured by calling the designated Authorized Contact Persons identified in this solicitation. Persons desiring further information or interpretation of the solicitation requirements shall make a written request for such information to Owner no later than seven (7) working days before solicitation due date and time. Interpretation of Solicitation Documents will be made by Addendum **only** and a copy of each Addendum is available through the City's on-line Vendor Registration system. Log on to the site below and follow directions as required:
https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.

11.11 Legal Status of Offeror. The Response and any subsequent supporting documents and the Contract must be executed in the Offeror's full name and legal entity status by an authorized representative of the Offeror and accompanied by sufficient documentation. Sufficient documentation must clearly indicate not only the legal name and entity status of Offeror, but also the capacity and authority of the person signing on behalf of Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, and any Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority.

11.12 Sales Tax Exemption. The Owner is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. Bid or proposal prices shall not include sales tax on materials, supplies, or equipment that are incorporated into the real property interest of the OWNER or are otherwise completely used and consumed in the performance of the Contract. Owner will furnish Contractor with a Sales Tax Exemption Certificate to be issued to Suppliers in lieu of the tax.

11.13 Anti-Lobbying and Procurement. Article 6, Chapter 2-7, Austin City Code, prohibits lobbying activities or representations by the Offeror between the date that the Solicitation is issued and the date of contract execution. The text of that Ordinance may be viewed at: http://www.cityofaustin.org/edims/document.cfm?id=161145.

12. MINOR INFORMALITIES

Owner reserves the right to reject any or all Responses and to waive any minor informality in any Response or in the solicitation procedure (a minor informality is one that does not affect the competitiveness of the Response).

13. SELECTION OVERVIEW

In an expeditious manner, an evaluation team comprised of AFS and City representatives will apply the evaluation factors set forth herein to all eligible and responsive Offerors in comparing Qualifications, Price Proposals, additional information as requested, and Interviews, recommending the successful top-ranked Offeror to the Owner and City and City. Owner and City will evaluate and rank each Response with respect to the Evaluation Criteria contained herein. Owner reserves the right to negotiate all elements that comprise the Offeror's submittal to ensure that the best possible consideration is afforded to all concerned.

14. AWARD AND EXECUTION OF CONTRACT

The evaluation team will process responses expeditiously. The Owner and City will review the staff recommendation and authorize negotiation and execution of a contract to the recommended top-ranked Offeror offering the best value to the Owner. After Owner has

authorized award of contract, the successful Offeror will be required to enter into a contract in a form established by Owner and City.

If Owner is unable to negotiate a satisfactory contract with the selected Offeror in a stipulated timeframe, Owner will formally end negotiations with that Offeror, and proceed to negotiate with the next Offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked Offerors end.

The project Guaranteed Maximum Price (GMP) and partial GMPs, if applicable, are anticipated to be negotiated at the appropriate times during the project design, and those established milestones will be stipulated in the contract form. The entire content of the Response will become a part of the executed contract documents. Failure of the successful Offeror to accept this obligation may result in cancellation of any award. Any damages accruing to Owner as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.

AFS Executive Director and/or designee will sign the contract after successful negotiations and execution of required contract documents by the successful Offeror. Contract will not be binding upon Owner until both parties have executed it. Owner will process the contract expeditiously however Owner will not be liable for any delays prior to the award or execution of contract.

15. CONFLICT OF INTEREST

The Owner and City may not accept a Response or award a contract with a firm who is currently under contract or who has received compensation to participate in preparing the specifications or any other work for which this CMR solicitation is based. The Owner and City will be conducting a thorough review of the participants of each proposed team, and their potential conflicts, as part of the evaluation process. Participants found to be in conflict will be replaced at the request of the Owner and City.

16. WITHDRAWAL OF RESPONSE

A Response may be withdrawn by Offeror, provided an authorized individual of the Offeror submits a written request to withdraw the Response prior to the time set for receipt of Responses. Withdrawn Responses may be resubmitted, with or without modifications, prior to the due date and time.

17. EXCEPTIONS, ADDITIONS, QUALIFICATIONS

If any exceptions are taken to any portion of the Solicitation, Offeror must clearly indicate the exceptions taken and include a full explanation as a separate attachment to the Proposal. The failure to identify exceptions and/or proposed changes with a full explanation will constitute acceptance by Offeror of the Solicitation as proposed by Owner.

Owner reserves the right to reject a Response containing exceptions, additions, qualifications or conditions not called for in the Solicitation Documents.

18. REJECTION OF PROPOSAL

Owner reserves the right to reject any or all Responses and to waive any minor informality in any submittal or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offerors).

18.1 The following **<u>will</u>** be cause to reject a Response:

.1 Response which is not signed by an individual empowered to bind the Offeror.
.2 Response which is not accompanied by acceptable proposal guaranty, with Power of Attorney attached, or a letter certifying the Bidder's ability to be bonded, from a surety company**, if required.**
.3 More than one Proposal for same Work from an individual, firm, partnership or corporation.
.4 Evidence of collusion among Offerors.
.5 Sworn testimony or discovery in pending litigation with Owner which discloses misconduct or willful refusal by contractor to comply with subject contract or instructions of Owner.
.6 Failure to submit MBE/WBE or DBE Compliance Document (if applicable) in accordance with the MBE/WBE Procurement Program Package
.7 Failure to have an authorized agent of the Offeror to attend the mandatory Pre-Proposal Meeting.
.8 Proposal received from an Offeror who has been debarred or suspended by Owner's Purchasing Officer.
.9 Proposal received from an Offeror when its principals are currently debarred or suspended by Federal, State or City governmental agencies. (Applicable for Proposal amounts equal to or in excess of $25,000.00).

18.2 The following **may** be cause to score a Response unfavorably or to Reject a Response:

.1 Poor performance in execution of work under a previous City contract.
.2 Failure to achieve reasonable progress on an existing City contract.
.3 Default on previous contracts or failure to execute Contract after award.
.4 Evidence of failure to pay Subconsultants, Subcontractors, Suppliers or employees in accordance with Contract requirements.
.5 Responses containing omissions, alterations of form, additions, qualifications or conditions not called for by OWNER, or incomplete Proposals. In any case of ambiguity or lack of clarity in the Response, OWNER reserves right to determine most advantageous Response to reject it.
.6 Failure to acknowledge receipt of Addenda.
.7 Failure to submit any of the items specified in the Evaluation Criteria or within this Solicitation
.8 Failure to submit post-submittal information within the allotted time(s), if applicable.
.9 Failure to timely execute Contract after award.
.10 Previous environmental violations resulting in fines or citations by a governmental entity (i.e. U.S. Environmental Protection Agency, Texas Commission on Environmental Quality, etc.).
.11 Safety record as set forth in Evaluation Criteria, Section 00410, Statement of Bidder's Safety Experience.
.12 Failure of Offeror to demonstrate, through submission of Statement of Offeror's Experience, Section 00400CMR and Attachments as required and specified in the Evaluation Criteria, its experience with projects of similar size, scope, and complexity.
.13 Evidence of Offeror's lack of sufficient resources, workforce, equipment or supervision, if required by inclusion of appropriate attachments in Section 00400CMR.
.14 Evidence of poor performance on previous Projects as documented in Owner's project performance evaluations.
.15 Failure to complete, sign and submit Section 00440, Affidavit - Prohibited Activities.
.16 Failure to submit Section 00630, Non-Discrimination Certificate.

.17 Failure to submit Section 00631, Title VI Assurances Appendix A.
.18 Failure to submit all other required documents as required in Evaluation Criteria.

19. BOND AND INSURANCE REQUIREMENTS

With this Response, Offeror is required to submit a letter from Offeror's surety stating Offeror's ability to acquire bonding as required in the full amount of the contract, either directly or through reinsurance, and ensuring the commitment from its surety to provide such bonding.

The Payment and Performance Bonds will be for the amount of the then current GMP for construction or the aggregate of the GMPs established in the then current Work Authorization Amendments.

In substantial compliance with the provisions of Chapter 2253 of the Texas Government Code, AFS shall require its Construction Manager, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Improvements, to furnish and deliver to the City, legally issued surety bonds in a form reasonably approved by the City, with the City and AFS named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Improvements and, upon the failure of the Construction Manager to so furnish and deliver all of the same in form, tenor and execution and with sureties reasonably satisfactory to the City, no rights obtain thereunder to Construction Manager, no construction of the Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and AFS will be in material default under the Agreement.

All bonds and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to Owner and shall be issued by a surety, who complies with the requirements of Texas Insurance Code, Title 12, Chapter 3503: SURETY BONDS AND RELATED INSTRUMENTS.

Minimum insurance requirements are specified in Section 00810CMR, Supplemental General Conditions in this Solicitation.

20. PREVAILING WAGE COMPLIANCE

Prevailing wage rates will be required on this Project. Current rate schedules will be provided by the Owner prior to start of construction. Information pertaining to prevailing wages and reporting is found in Section 00830, Wage Rates and Payroll Reporting.

21. INSPECTION, CONSTRUCTION MATERIALS AND BUILDING COMMISSIONING

Owner will provide or contract for, independently of the CMR firm, the inspection services, the testing of construction materials engineering, building commissioning and the verification testing services necessary for acceptance of the facility by Owner. Awarded CMR will be required to provide coordination of these services, as required by the Owner-approved Quality Assurance Plan.

22. OPPORTUNITY TO PROTEST

The City's Contract Management Department (CMD) Director has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying City of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the CMD Director may dismiss your complaint or protest.

Prior to Proposal due date: If you are a prospective Offeror and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Proposal is due, you must notify OWNER in writing of the alleged deficiency before that date, giving OWNER an opportunity to resolve the situation prior to the Proposal due date.

After Proposal due date: If you submit a Proposal to Owner and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:

22.1 You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.

22.2 You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Proposal due date. If you know of the facts before that date, you must notify OWNER as stated above.

22.3 You must submit your protest in writing and must include the following information:

1. your name, address, telephone, and fax number;
2. the solicitation number 3. a detailed statement of the factual grounds for the protest, including copies of any relevant documents.

22.4 Your protest must be concise and presented logically and factually to help with OWNER's review.

22.5 When Owner receives a timely written protest, the Contract Management Director will determine whether the grounds for your protest are sufficient. If the Contract Management Director decides that the grounds are sufficient, Contract Management will schedule a protest hearing, usually within five (5) working days. If the Contract Management Director determines that your grounds are insufficient, you will be notified of that decision in writing.

22.6 The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from OWNER are: representatives from the department that requested the purchase, the Law Department, Contract Management, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

22.7 A decision will usually be made within fifteen (15) calendar days after the hearing.

22.8 The Contract Management Director will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.

22.9 When a protest is filed CITY usually will not make an award until a decision on the protest is made. However, Owner will not delay an award if the CITY or the Contract Management Director determines that:

1. Owner urgently requires the supplies or services to be purchased, or
2. Failure to make an award promptly will unduly delay delivery or performance.

In those instances, the CMD will notify you and make every effort to resolve your protest before the award.

The protest or notice of intent and the protest shall be submitted in writing to the following address:

P.O. Address for U.S. Mail:

City of Austin
ATTN: Director, CMD
P.O. Box 1088
Austin, Texas 78767-0845
PHONE: (512) 974-7181

Street Address for Hand Delivery/Courier Service:

City of Austin
ATTN: Director, CMD
105 W. Riverside Dr., Suite 205
Austin, Texas 78704

cc: Film Society of Austin, Inc.
Attn: Rebecca Campbell,
Executive Director
1901 E. 51st Street
Austin, Texas 78723
PHONE: (512)322-0145

23. FEDERAL CONTRACTING REQUIREMENTS

To the extent that the Project directly receives federal funding there will be federal contracting requirements for this Project in addition to the standard Owner's contracting requirements. Because the Owner has received federal funding for some of its projects, the successful Offeror will be required to sign Section 00631, "Appendix A" the federal nondiscrimination certificate included in the Contract Documents and made a part thereof.

24. EVALUATION CRITERIA

STEP ONE: REQUEST FOR QUALIFICATIONS EVALUATION ITEMS. OFFERORS MUST RESPOND TO ITEMS 1 THROUGH 11 BELOW.

Item 1: MBE/WBE Procurement Program **Yes or No**

Submit one (1) original and one (1) copy in a separately sealed envelope labeled "Compliance Plan and /or Good Faith Efforts (GFE) Documentation"

For the selection of a Construction Manager-at-Risk general contractor, the City's Small & Minority Resources Department ("SMBR") will issue goals once the scopes of work have been identified during the design, pre-construction, and construction phases of the project. The Construction Manager at Risk general contractor must comply with both: (1) the City of Austin's Third Party Resolution (20120112-058), and (2) the agreement between the City of Austin and the Austin Film Society relating to the development and construction of new cultural facilities by the Austin Film Society for public use funded in part with bond funds, which was executed on July 22, 2014 (the "Development Agreement").

Specific scopes of work and the magnitude of the scopes of work cannot be determined until the design is sufficiently complete; at which time the successful Construction Manager-at-Risk firm will be responsible for complying with established goals or provide documentation detailing their GFE to meet the established MBE/WBE goals. If the Offeror has neither met the goals nor made GFEs to meet the goals, the Offeror's proposal will be considered non-responsive and will not be considered for award.

Offeror must submit:

☐ Section 00460CMR, MBE/WBE Statement of Responsibility

Item 2: Safety Record **Yes or No**

Submit one (1) original and one (1) copy in a separately sealed envelope labeled "Safety Documentation"

Offeror must submit safety experience and safety program information, including a written Safety Program. The following factors may be considered, but are not limited to: Experience Modifier Rate, Lost Time Incident Rate, Total Recordable Case Rate, Safety Program, and OSHA Citations.

If, based on the entirety of the Offeror's safety record, industry standards, and the risks associated with the current Project, the Offeror is found to have an unacceptable safety record and/or safety program the Offeror's response may be considered non-responsive and may not be considered for award.

Offeror must submit:

☐ Section 00410, Statement of Offeror's Safety Experience
☐ Section 00415, Safety Information Form
☐ Written Safety Program document

Item 3: **Offeror's Financial Capability** **Yes or No**

Submit one (1) original and one (1) copy in a separately sealed envelope labeled "Financial Capability Documentation"

The Offeror must provide evidence of financial capability and stability. Offeror's financial capability must be appropriate to the size and scope of this Project.

The following factors may be considered, but are not limited to: Current Assets/Current Liabilities Ratio; Cash + Short term investments; Income from Operations/Interest Expense; Opinion from Offeror's Auditor; Bonding capacity; and Notes to the Financial Statements.

Offeror must submit:

- ☐ Letter from Offeror's Surety stating Offeror's ability to acquire bonding in the full amount of the contract, and
- ☐ Audited Financial Statements for the most recent three (3) years. Audited financial statements must include completed audited reports with balance sheets, income statements, cash flow, auditor notes, and all other reports associated with the auditor's report;
  OR
- ☐ Business entity federal tax filings for the most recent three (3) years, if Audited Financial Statements are unavailable.

Responses to Items 4 through 10 must be submitted in a binder and divided by tabs for ease of reference. The Offeror must submit one (1) original signature copy of their response, one (1) duplicate copy and one (1) digital/electronic version on CD or Flash Drive in a sealed container. The Offeror is cautioned to refer to all other sections of the Solicitation Documents, Clarifications and/or Addenda for further details.

Item 4: **Acceptable Documentation** **Yes or No**

Offeror must submit all documents required by this solicitation. Failure to submit all required documents (including those identified in other Evaluation Criteria) with acceptable responses and information meeting the applicable requirements of those documents may cause Offeror to be deemed "non-responsive" and disqualified. Offeror shall also comply with page number limitations requested in the Submittal Requirements of the Section 00100CMR solicitation.

Offeror must submit the following documents, which are in addition to documents required in the other Evaluation Items listed herein:

- ☐ Section 00400CMR, Attachment A, Offeror's Information
- ☐ Section 00400CMR, Attachment B, Authentication of Submittal
- ☐ Section 00405, Certificate of Non-Suspension or Debarment
- ☐ Section 00440, Affidavit - Prohibited Activities
- ☐ Section 00475, Nonresident Provisions
- ☐ Section 00630, Nondiscrimination Certificate
- ☐ Section 00631, Title VI Assurances Appendix A

☐ Name, address, and telephone number of person in your organization authorized to negotiate contract terms and render binding decisions on contract matters

☐ Sufficient documentation of Offeror's legal name and entity status signed by an authorized representative of the Offeror which clearly indicates not only the legal name and entity status, but also the capacity and authority of the person signing on behalf of Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, and, as applicable, any Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority.

Item 5: **Experience of Offeror** **25 points max**

The Offeror must provide its past history of successful completion of both similar size and scope projects utilizing the CMR project delivery method. The documentation shall be presented in sufficient detail to demonstrate that CMR projects are a primary business focus and service provided by the Offeror. Projects on which the proposed project team or key personnel (including any applicable subconsultants or subcontractors) have actively participated are preferred.

Use Section 00400CMR, Attachment C form, to describe five (5) projects that demonstrate experience meeting the following criteria that were successfully completed within the past ten (10) years. Additional consideration will be given to projects combining multiple elements listed below:

- Previous adaptive reuse projects
- Large Commercial Renovations / Shell & Core
- LEED / green building standards
- Experience with CMR Delivery Method
- Public Projects (additional reporting)

Offeror must submit:

☐ Section 00400CMR, Attachment C, Statement of Experience – One (1) page per project

Item 6: **Experience of CMR Firm's Key Personnel** **15 points max**

The CMR Firm's Key Personnel must have experience on CMR projects of similar size, scope and complexity. The identified Key Personnel must be employed by the CMR firm. List five (5) projects meeting these criteria which have been completed in the past ten (10) years for each individual Key Personnel. Additional consideration will be given to team members with experience on projects listed by the CMR firm as part of Item 5 and/or those with experience combining multiple elements listed below:

Key Personnel Include: **Project Manager, Safety Manager, Superintendent**

- projects demonstrating successful completion of CMR projects

- projects demonstrating successful completion of work on an Shell and Core, Large Commercial renovations
- projects with municipalities, government, public sector clients

Offeror must submit:

☐ Section 00400CMR, Attachment D, Statement of Experience of Key Personnel – One (1) page per project per individual
☐ Resumes of Key Personnel – One (1) page per individual
☐ Letters of commitment that the named individuals will be those working on the project – One (1) page per individual
☐ No more than three (3) letters of reference for each key personnel

Item 7: **CMR Firm's Team Structure** **20 points max**

The Offeror should provide information sufficient to identify the CMR Team Structure and demonstrate how this Project will be delivered by the Team. The Offeror should also provide information regarding the Team's experience with Austin-area issues during the past five (5) years.

Offeror must submit:

☐ **Organization Chart** - A **detailed** organizational chart which specifies project leadership roles and reporting responsibilities for Key Personnel of CMR firm and Major Subconsultants/Subcontractors including, but not limited to those previously identified. (Organizational chart may be provided on 11" x 17" paper size.) **One (1) page limit**

☐ **Communications Plan** – Describe how the CMR Project Team members will interface within the Owner's third-party Design Team and with OWNER's Project Representative(s) and other City personnel. **Two (2) page limit**

☐ **Austin-Area Issues –** A brief narrative describing experience in the following areas and reference projects relating to that experience. **Two (2) page limit**
- Specific City of Austin site development and building permit requirements
- Environmental conditions, constraints and community issues in the Austin area
- Construction costs and practices in the Austin area
- Experience contracting and working with construction trades in the Austin area
- Public awareness and involvement in project development in the Austin area

Item 8: **Work Approach and Delivery Schedule** **20 points max**

The Offeror must demonstrate its capability to perform the work by proposing a detailed work plan and schedule for how this Project will be delivered, including its approach to managing the Project schedules, performing constructability reviews, quality control, and cost control. **Delivery Schedule should be based upon the target completion date of February 2017.**

Offeror must submit:

☐ **Technical Plan** – Technical plan for accomplishing the Work. **Four (4) page limit**

Include a detailed description of your work plan by tasks (i.e., Task 1, Task 2 etc). Identify the steps you will take in proceeding from Task 1 to the final tasks for this Project (include performing constructability reviews and managing quality control).

☐ **Schedule** - Proposed work approach to delivering the Project considering the budget (Construction Cost Limitation) and Substantial Completion date schedule information provided in this document. **Two (2) page limit**

☐ **Construction Planning** - Recommendations to work packaging and any substantial time or budget savings associated with the CMR's recommended changes. **Two (2) page limit**

☐ **Cost Control** - Detailed strategy for cost control on the project. **Two (2) page limit**

Item 9: **Offeror's Business Practices, Reputation and Quality of Services** **15 points max**

Offeror must present reasonably supported evidence of its reputation and business practices in providing contracting opportunities, sustainable business practices, and construction cost control strategies.

Business Practices:

Offeror must submit:

☐ **Outreach** – Narrative of your business practices to provide hiring opportunities for MBE/WBE and Historically Underutilized Businesses on a race and gender neutral basis, including small businesses and other historically underutilized businesses. Include information pertaining to: access to capital; mentoring programs; and other initiatives or business practices developed by the Offeror on past projects. **Two (2) page limit**

☐ **Sustainability** – Narrative on business practices and internal policies that describe your use of recycled, reclaimed, or refurbished construction materials. Additionally, describe your internal policies and practices that encourage identification of opportunities for water and energy conservation, reducing greenhouse gas emissions, and purchasing environmentally preferable products. **Two (2) page limit**

Reputation and Quality of Services:

☐ **Performance** – Based on Offeror's workmanship and performance on past projects listed in Section 00400CMR, Attachment C and Attachment D. Offeror will be allocated points according to the evaluation of the Offeror's workmanship and performance of services, including the frequency and magnitude of issues experienced on listed projects within the past **ten**

(10) years. Examples include:

- Workmanship
- Timely completion of projects
- Cooperative working relationship with entity
- Prompt payment of subcontractors and suppliers at all levels
- Compliance with prevailing wage provisions and history of violations
- Compliance with other contract terms

Item 10: **Team's Local Business Presence** **5 points max**

The Owner and City seeks opportunities for businesses with a Local Business Presence in the Austin Corporate City Limits to participate on City contracts thereby providing a minimal environmental footprint through reduced transportation time and costs associated with Project delivery. A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the past five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation. Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the proposed team members on the Offeror's MBE/WBE Compliance Plan, if applicable.

For Illustrative Purposes Only: If you propose 10 team members (General Contractor and subcontractors) and eight (8) of the team members have a local business presence, you would have a local business presence of 80% and would receive 4 points. If three (3) members of your team have a local business presence you would have a local business presence of 30% and would receive 2 points.

Team's Local Business Presence	Points Awarded
Local business presence of 90% to 100%	5
Local business presence of 75% to 89%	4
Local business presence of 50% to 74%	3
Local business presence of 25% to 49%	2
Local presence of between 1 and 24%	1
No local presence	0

Offeror must submit:

☐ Section 00461, Local Business Presence Identification Form

END OF STEP ONE

Five or fewer CMR Firms will be shortlisted based on evaluations of written responses to Step One Items 1 through 10 to proceed to Step Two.

STEP TWO: REQUEST FOR PROPOSALS
DO NOT RESPOND TO STEP TWO UNLESS REQUESTED TO DO SO BY THE OWNER.

The Owner and City will notify in writing the CMR Firms that have been shortlisted and will provide additional details regarding the second step. The Owner and the City reserves the right to request additional information as well as conduct interviews.

Item 11: **Pricing** **30 points max**

The Owner and City are interested in obtaining cost proposals for: 1) Construction Manager's Fee; 2) General Conditions, and 3) Preconstruction Phase Services as stipulated in Section 00300CMR, Cost Proposal Form.

Cost proposals will be evaluated based upon competitiveness of the proposed Construction Manager's Fee and the proposed General Conditions estimated amount. Five (5) points will be allocated for the General Conditions estimated amount and twenty (20) points will be allocated to the proposed Construction Manager's Fee. Five (5) points will be allocated to the thoroughness of the detailed itemization of proposed General Conditions.

Offeror must submit:

- ☐ Section 00300CMR - Cost Proposal Forms including A-1, A-2, A-3
- ☐ A detailed itemization of General Conditions of all staff and temporary amenities, including field offices and construction supplies (spreadsheet format is preferred). Two (2) page limit

For illustrative purposes, if the lowest price is $200,000, that price is weighted "1" ($200,000/$200,000 = 1) and receives 30 points (1 X 30 = 30).

A price of $300,000 for the same proposal would be weighted ".67" ($200,000/$300,000 = 0.67) and receive 20.1 points (0.67 X 30 = 20.1).

Likewise, a price of $400,000 would be weighted at ".50" ($200,000/$400,000 = 0.50) and receive 15 points (0.50 X 30 = 15).

Item 12: **Interview** **25 points max**

If Interviews are conducted, the Interview will consist of a formal presentation and question and answer session with the Owner and City's Evaluation Panel. The number of CMR Firms invited to interview will depend on the scores following evaluation of the written submittals. Owner and City will consider significant gaps in point separation between the top ranked Offerors in determining the number to be interviewed. No more than five CMR Firms will be interviewed.

END

COST PROPOSAL FORM
Section 00300CMR

The Owner has established a Construction Cost Limitation of $3,800,000.00 The Contract Amount will consist of the Preconstruction Phase Stipulated Sum, the Construction Manager Fee Stipulated Sum, a General Conditions Stipulated Sum, and the Cost of the Work, with the Cost of the Work and a Guaranteed Maximum Price to be established through an Amendment, or if applicable Amendments.

A. **Construction Manager's Fee**. The Fee will consist of a Stipulated Sum or, if approved by Owner, a percentage multiplier to cover Construction Manager's overhead and profit. It shall not include any items that are listed on the Estimate of Costs for General Conditions Attachment A1 to this 00300CMR, but may include Project Manager/Superintendent bonuses/incentives/rewards. Attachment A3 to this 00300CMR lists the items that may be included in the Construction Manager Fee Stipulated Sum. The CM Fee will consist of a fixed fee or a percentage fee, as determined by Owner.

Construction Manager Fee:
Percentage Fee: _____percent (____%) (Proposer to fill in amount)
Non-Negotiable

B. **General Conditions Stipulated Sum**. Based upon currently known and reasonably anticipated Project requirements, Proposer shall prepare an estimated Stipulated Sum for General Conditions costs attributable to the Work. The estimate must address all currently known Project requirements in sufficient detail to be evaluated. Attachment A1 to 00300CMR lists which items must be included in and excluded from your Proposal. Provide a detailed itemization of all staff and temporary amenities, including field offices and construction supplies. The Project staff must correlate to the information previously provided for in the organizational chart and the key persons assigned to this Project, with percentage of time allocated to this Project for each staff position listed. All items shall be sufficiently detailed in your Proposal to be readily identifiable as an approved General Condition or will be excluded from the payment for General Conditions Costs. Once the General Conditions Stipulated Sum Estimate has been established, it is anticipated that, as the Project design and scope are further defined, the estimate may be revised, as documented and warranted with the Owner's approval, which approval will not be unreasonably withheld or delayed. Material changes in the scope of the Work and/or the Project Time will include appropriate adjustments to the General Conditions Stipulated Sum to be provided with the GMP Proposal. Any items added by the Proposer must have an estimated line item cost and may be accepted or rejected by the Austin Film Society or the City of Austin. Such items will not be included in the evaluation. Except as provided above for material changes in the scope of the Work and Contract Time, items that are not sufficiently detailed on your Proposal to be readily identifiable may not be added at a later date to the Contract Amount by Request for Proposal or Change Order and, if provided to the Site or as part of the Work, will be required to be absorbed from either the Preconstruction Phase Stipulated Sum or the Construction Manager Fee Stipulated Sum.

General Conditions Stipulated Sum $_____(Proposer to fill in amount)
Non-Negotiable

C. **Preconstruction Phase Services Estimate**. The Preconstruction Phase Services Stipulated Sum will be negotiated and established in the 00500CMR Agreement. The Proposer must include its cost estimate for Preconstruction Phase Services attributable to the Work described in Article 5 of the form of the 00500CMR Agreement in Attachment A2 to 00300CMR. This cost estimate will not be evaluated as part of the monetary cost

proposal evaluation factor. It will be used to establish the appropriate authority for the performance of this portion of the Work.

Preconstruction Phase Estimate $_____(Proposer to fill in amount)
Negotiable Prior to signing Agreement

Delivery Schedule
In formulating the Construction Manager's Fee and General Conditions Stipulated Sum, the Proposer acknowledges the 730 Calendar Days provided from the Notice to Proceed under a GMP Amendment to achieve Substantial Completion.

Addenda Checklist
The undersigned acknowledges receipt of the following addenda (initial if applicable).

Addendum No. 1 dated	Received	_____
Addendum No. 2 dated	Received	_____
Addendum No. 3 dated	Received	_____
Addendum No. 4 dated	Received	_____

Authorized Signature
By signature hereon, Proposer's authorized agent ("Agent") certifies that all necessary corporate acts have been taken to authorize the Agent to sign this document and bind Proposer under this and any related documents that may result from Proposer's Proposal.

_____
Proposer/Construction Manager

By: _____
Authorized Signature

Name: _____

Title: _____

_____
Secretary, *if Proposer is a Corporation
(Seal)

_____
Date

*Copy of Corporate Resolution and minutes authorizing an officer of Proposer to bind Proposer must be signed and dated no earlier than one week before Proposal date, and attached to this document.

_____
Address

_____
Telephone Number / Fax Number

Note:
If Proposer is not a corporation, equivalent documentation for Proposer's type of entity must be submitted in the same manner as the Corporate Resolution. If partnership or joint venture, the corporate approvals must be from: the Managing Partner, if a limited partnership; all partners, if a general partnership; and all venturers, if a joint venture. If any partner or joint venturer is a corporation, all corporate acts to authorize the corporation to participate must also be submitted.

Attachment A1 to 00300CMR

Approved and Excluded General Conditions Items

This Attachment-A1 to 00300CMR lists which items must be included and excluded from your Proposal. Provide numbers of staff persons you will provide for the positions listed under Project Management. Any items not included on your Proposal may be excluded from the payment for General Conditions costs. Any items added by the Proposer must have a line item estimated cost and may be accepted or rejected by the Owner and the City of Austin. The cost of any proposed additional items must be excluded from the General Conditions Stipulated Sum submitted. If Proposer is successful any Owner approved additional items will be added to the General Conditions Stipulated Sum prior to execution of the Agreement.

General Conditions Stipulated Sum $_____ (Proposer to fill in amount)
Non-Negotiable

Total cost of all proposed Additional General Conditions Items (to be excluded in the amount above)

$_____

NOTE: Proposers, in your Cost Proposal submittal, provide a detailed itemization of the General Conditions quantity and quality of staff and items that are included in your Proposal. This detailed itemization must be attached to and is automatically incorporated into this Attachment A1 to 00300CMR, as if fully set out herein.

Project Management (Indicate how many staff will be provided for each position listed, including percentage of weekly effort devoted to this Project for each position, and whether this is one of the key persons identified in your Response to RFQ as being assigned to this Project:)

Project Management	**How many**	**% / week**	**Key Person (y/n)**
Superintendent(s)			
CPM Scheduler(s)			
Field/Office Engineer(s)			
Field Office Support Staff(s)			
Assistant Superintendent(s)			
MEP Coordinator(s)			
Safety Manager(s)			
Project Manager(s)			
Project Engineer/ Assistant PM			
Estimator(s)			
M/WBE Compliance Officer(s)			
LEED compliance officer(s)			

- Project Manager/Superintendent bonuses/incentives/rewards **MUST BE EXCLUDED** from the estimate of costs for General Conditions, but may be included in the Construction Manager Fee.

Bonds and Insurance

Builder's Risk Insurance
Payment & Performance Bonds
Professional Liability Insurance
General Liability Insurance
Other General Project Insurance

Temporary Amenities and Utilities

Dumpsters
Monthly Water Costs
Temporary Fire Protection
Fencing & Covered Walkways

Temporary Water Distribution & Meters Installation
Temporary Electrical Distribution & Meters
Site Erosion Control & Project Entrance(s)

Temporary Toilets
Monthly Electrical Costs
Street Rental & Barricades
Monthly Telephone Installation Costs

Temporary Telephone System

Coordination of Drawings

Field Offices & Construction Supplies

Partnering Costs
Photos/Videos
Reproduction Services
Project Specific Signage
Remote Parking Expenses
System/Watchman
Drinking Water & Accessories
Employee Identification System
Office Clean-Up/Janitorial Services
Mobilization & Demobilization (Equipment Only)
Project Cleaning at Substantial Completion & Final Acceptance

First Aid Supplies Job
Reference Manuals
Monthly Office Supplies
Postage/Special Shipping
Project/As-Built Drawings Security
Move-In/Out & Office Setup
Safety Material and Equipment
Small Tools and Storage Trailers
Monthly Office Trailer Rental Costs

- All items listed above, are subject to requests for additional information or breakdown.

Items that Construction Manager proposes to add to the General Conditions, if Owner accepts, include line item for each:

_____$_____
_____$_____
_____$_____
_____$_____
_____$_____

The total of all these proposed Additional General Conditions Items must be excluded from the General Conditions Stipulated Sum, but may be added if Proposer is successful and Owner and the City of Austin agree to add such Additional Items.

Items that **MUST BE EXCLUDED** from the estimate of costs for General Conditions line item, but which may be included in the Construction Manager Fee.

Project staff mobilization costs
Purchase/Lease of vehicles and maintenance costs
Construction association costs/dues/fees etc.
Purchase/Rental of radios/communication equipment
Purchase/Rental of jobsite computer and electronic equipment
Purchase/Rental of specialized telephone systems (including cellular/digital phones)
The cost of non-statutory subcontractor bonds or subcontractor default insurance

Owner initiated Requests for Proposals or Change Orders that Owner deems to materially increase the Scope of Work will include appropriate increases to the General Conditions Stipulated Sum.

Authorized Signature

By signature hereon, Proposer's authorized agent ("Agent") certifies that all necessary corporate acts have been taken to authorize the Agent to sign this document and bind Proposer under this and any related documents that may result from Proposer's Proposal.

_____
Proposer/Construction Manager

By: _____
Authorized Signature

Name: _____

Title: _____

_____
Secretary, *if Proposer is a Corporation
(Seal)

_____
Date

*Copy of Corporate Resolution and minutes authorizing an officer of Proposer to bind Proposer must be signed and dated no earlier than one week before Proposal date, and attached to this document.

_____
Address

_____
Telephone Number / Fax Number

Note:

If Proposer is not a corporation, equivalent documentation for Proposer's type of entity must be submitted in the same manner as the Corporate Resolution. If partnership or joint venture, the corporate approvals must be from: the Managing Partner, if a limited partnership; all partners, if a general partnership; and all venturers, if a joint venture. If any partner or joint venturer is a corporation, all corporate acts to authorize the corporation to participate must also be submitted.

Attachment A2 to 00300CMR

Estimate of Costs For Preconstruction Phase Services

Provide a cost estimate for Preconstruction Phase Services attributable to the Work described in Article 5 of the form of the 00500CMR Agreement.

This cost estimate will not be evaluated as part of the monetary cost proposal evaluation factor. It will be used to establish the appropriate authority for the performance of this portion of the Work.

Preconstruction Phase Fee $_____(Proposer to fill in amount)
Negotiable Prior to signing Agreement

Authorized Signature
By signature hereon, Proposer's authorized agent ("Agent") certifies that all necessary corporate acts have been taken to authorize the Agent to sign this document and bind Proposer under this and any related documents that may result from Proposer's Proposal.

_____
Proposer/Construction Manager

By: _____
Authorized Signature

Name: _____

Title: _____

_____
Secretary, *if Proposer is a Corporation
(Seal)

Date

_____
Address

_____
Telephone Number / Fax Number

*Copy of Corporate Resolution and minutes authorizing an officer of Proposer to bind Proposer must be signed and dated no earlier than one week before Proposal date, and attached to this document.

Note:
If Proposer is not a corporation, equivalent documentation for Proposer's type of entity must be submitted in the same manner as the Corporate Resolution. If partnership or joint venture, the corporate approvals must be from: the Managing Partner, if a limited partnership; all partners, if a general partnership; and all venturers, if a joint venture. If any partner or joint venturer is a corporation, all corporate acts to authorize the corporation to participate must also be submitted.

Attachment A3 to 00300CMR

Construction Manager Fee Stipulated Sum

The Construction Manager Fee will provide full compensation for this Project's proportionate share of the Construction Manager's main office profit, general overhead and the following Project related costs and expenses:

All Project related expenses in connection with maintaining and operating Construction Manager's main office, including:

(1) Salaries of Construction Manager's officers, project manager(s), estimators, and schedulers-excluding all costs included in the General Conditions Stipulated Sum.

(2) Salaries of persons employed in the main office of the Construction Manager whose time is devoted to the general conduct of the Construction Manager's business, such as office managers, safety officers, stenographers, plan clerks, file clerks, and draftsmen.

(3) Construction Manager's main office overhead or general expenses of any kind exclusively related to this Project's proportionate share of same.

(4) Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems relating to accounting in Construction Manager's main office-excluding all costs related to General Conditions.

(5) Interest on the Construction Manager's capital or on money borrowed by the Construction Manager, including the capital employed by the Construction Manager in the performance of the Work.

(6) Amounts required to be paid by Construction Manager for Federal and/or State income and franchise taxes related to the Work.

(7) Legal, accounting, or other similar professional services provided by or to Construction Manager, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with the Owner, the A/E or any other person or entity relating to the Project.

Note: The inclusion of any item on this list does not authorize the payment for such item except as a subsidiary portion of otherwise payable overhead and profit and does not authorize or allow a claim for such item(s) not otherwise allowed by Texas law.

Authorized Signature

By signature hereon, Proposer's authorized agent ("Agent") certifies that all necessary corporate acts have been taken to authorize the Agent to sign this document and bind Proposer under this and any related documents that may result from Proposer's Proposal.

_____
Proposer/Construction Manager

By: _____
Authorized Signature

Name: _____

Title: _____

_____
Secretary, *if Proposer is a Corporation
(Seal)

_____
Date

*Copy of Corporate Resolution and minutes authorizing an officer of Proposer to bind Proposer must be signed and dated no earlier than one week before Proposal date, and attached to this document.

_____

Address

_____

Telephone Number / Fax Number

Note:

If Proposer is not a corporation, equivalent documentation for Proposer's type of entity must be submitted in the same manner as the Corporate Resolution. If partnership or joint venture, the corporate approvals must be from: the Managing Partner, if a limited partnership; all partners, if a general partnership; and all venturers, if a joint venture. If any partner or joint venturer is a corporation, all corporate acts to authorize the corporation to participate must also be submitted.

Attachment A

(Criteria Item 4)

OFFEROR'S INFORMATION

Offeror must answer all questions completely and all information must be clear, accurate and comprehensive. If necessary, questions may be answered on separate attached sheets.

If Offeror is a Joint Venture, complete Attachment A for **each** joint venture firm(s).

A.	Name of Offeror:			
	Parent company if subsidiary:			
B.	Offeror's Permanent Address:			
	Branch office, if applicable:			
C.	Offeror's Phone No.:			
D.	Number of Years in Business:			
	Indicate whether Offeror is a partnership, corporation, joint venture, or individual: *(Each Joint Venture Partner must complete a separate Attachment A)*			
	State in which incorporation or license to operate:			
E.	If a Joint Venture, Percentage Control:			
F.	Federal Tax ID:		Vendor Code:	
G.	Name of Contact Person:			
	Address:			
	Phone:		Fax:	
	Email:			

H.	Has the Offeror defaulted on a contract?	YES (____) NO (____)
	If yes, please explain. Add additional sheets if necessary.	

I.	Currently or in the last five (5) years has Offeror been a party to any claims, judgments or lawsuits as a part of any project to which it was involved? YES (____) NO (_____)
	If yes, please explain. Add additional sheets if necessary.

J.	Is the Offeror or principals of Offeror now, or has the Offeror or principals of Offeror, ever been involved in any bankruptcy or reorganization proceedings? YES (___) NO (_____)
	If yes, please explain. Add additional sheets if necessary.

K.	Describe the quantity and nature of any work, interest in work, partnership interest, land ownership or other interest in any project, property or business dealing within the proposed project area or part or current business relationship which may give rise to a potential conflict of interest for your firm or associated firms in the execution of this project:

L.	Texas Board of Professional Engineers (TBPE) Registration No.: (IF APPLICABLE)	

M.	Registered Architect (TBAE) Registration No.: (IF APPLICABLE)	

END

Attachment B

(Criteria Item 4)

AUTHENTICATION OF SUBMITTAL

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF TRAVIS

I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Section, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this Section may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my offer to be rejected.

OFFEROR'S FULL NAME AND ENTITY STATUS:

_____

_____
Signature, Authorized Representative of Offeror

_____
Title

_____
Date

END

Attachment C

(Criteria Item 5)

EXPERIENCE OF OFFEROR

DUPLICATE FORM AS NECESSARY - ONE PAGE PER PROJECT

PROJECT OWNER / CLIENT		**POC**	
PHONE		**EMAIL**	
ADDRESS			

PROJECT NAME/LOCATION	
CONSTRUCTION COST LIMITATION / FIXED PROJECT BUDGET	$
FINAL CONTRACT AMOUNT	$
CONTRACT START DATE	
SUBSTANTIAL COMPLETION DATE	
ACTUAL COMPLETION DATE	
DESCRIBE SCOPE OF WORK	
EXPLAIN SIMILARITIES TO THIS WORK AS DESCRIBED IN SECTION 01010, SUMMARY OF WORK	
DESCRIBE MBE/WBE, HUB, AND SMALL BUSINESS REQUIREMENTS AND YOUR PARTICIPATION	

Attachment D

(Criteria Item 6)

EXPERIENCE OF KEY PERSONNEL

- **Project Manager ● Superintendent ● Safety Manager**

DUPLICATE FORM AS NECESSARY - ONE PAGE PER PROJECT, PER INDIVIDUAL

NAME OF KEY PERSONNEL		**TITLE**	
COMPANY / EMPLOYER		**PHONE**	

PROJECT OWNER / CLIENT		**POC**	
PHONE		**EMAIL**	
ADDRESS			

PROJECT NAME/LOCATION	
CONSTRUCTION COST LIMITATION / FIXED PROJECT BUDGET	$
FINAL CONTRACT AMOUNT	$
CONTRACT START DATE	
SUBSTANTIAL COMPLETION DATE	
ACTUAL COMPLETION DATE	
DESCRIBE SCOPE OF WORK	
EXPLAIN SIMILARITIES TO THIS WORK AS DESCRIBED IN SECTION 01010, SUMMARY OF WORK	

CERTIFICATE OF NON-SUSPENSION OR DEBARMENT

Section 00405

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of $25,000.00 and all non-procurement transactions. This certification is required for all bidders on all City of Austin Contracts to be awarded with values equal to or in excess of $25,000.00 and all non-procurement transactions.

The CONTRACTOR hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

PROJECT Name _____

PROJECT Address _____

CONTRACTOR'S Name _____

Signed by (Authorized Representative) _____

Printed Name: _____

Title _____

Date _____

END

SAFETY RECORD QUESTIONNAIRE & STATEMENT OF BIDDER'S SAFETY EXPERIENCE

~~**(To Be Submitted Post-Bid)**~~

Project: _____

CIP ID Number: _____

Pursuant to Section 252.0435 of the Local Government Code, the Austin City Council will consider the safety records of potential contractors prior to awarding bids on City contracts. The City of Austin has adopted the following written definitions and criteria for accurately determining the safety record of a Bidder prior to awarding bids on City contracts. The term "Bidder" includes the firm, corporation, partnership, or other legal entity represented by the Bidder or anyone acting for such firm, corporation, partnership or other entity submitting the bid. The definitions and criteria for determining the safety record of a Bidder are:

> "Citations" include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. Notice of Violations and Notice of Enforcement received from the TCEQ shall include those classified as major violations and moderate violations under the TCEQ'S regulations for documentation of Compliance History, 30 Texas Administrative Code, Chapter 60.2 (c) (1) and (2).
>
> "Environmental Protection Agency" includes, but is not limited to the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Texas Department of Health, the Texas Parks and Wildlife Department, the Structural Pest Control Service, agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.

1. If the Bidder's response to the following questions reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Bidder for serious violations of Occupational Safety & Health Administration (OSHA) regulations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.
2. If the Bidder's response to the following questions reveals more than one (1) case in which Bidder has received a citation or for which final orders have been entered from an environmental protection agency for violations within the past five (5) years, the City will, at its discretion, determine whether to disqualify the Bidder.
3. If the Bidder's response to the following questions reveals that the Bidder has been convicted of a criminal offense within the past ten (10) years or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily harm or death, at its discretion, the City will determine whether to disqualify the Bidder.
4. The City may consider the responses to each question listed below separately when making a discretionary determination of whether to disqualify a Bidder and it may consider the cumulative impact of the information generated by the Bidder's responses in making the determination.

5. The Bidder acknowledges the requirements for Safety Training (listed in Section 00700) must be met before any work commences on the project.
6. In order to consider the safety records of potential contractors prior to awarding bids on City contracts, the City requires that Bidders answer the following questions and submit them upon request:

QUESTION ONE

Has the Bidder received any Citations for violations of OSHA within the past five (5) years? ❒ Yes ❒ No

QUESTION TWO

Has the Bidder received any Citations for violations of environmental protection laws or regulations within the past five (5) years? ❒ Yes ❒ No

QUESTION THREE

Has the Bidder ever been convicted, within the past ten (10) years, of a criminal offense or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily injury or death? ❒ Yes ❒ No

---

If the Bidder has indicated "Yes" to any question above, the Bidder must provide to the City, with its bid submission, the following information:

Date of Citation or offense and location where violation or offense occurred, type of violation or offense, final disposition of violation or offense, if any, and penalty assessed.

In addition, the City will utilize the following information and in its discretion, as additional support to make any discretionary determination of whether to disqualify a Bidder. Accordingly, Bidder must answer the following questions and provide evidence that it meets minimum OSHA construction safety standards and has a lost time injury rate that does not exceed the limits established below:

1. Does the Bidder have a written construction safety program? ❒ Yes ❒ No
2. Does the Bidder conduct regular construction site safety inspections? ❒ Yes ❒ No
3. Does the Bidder have an active construction safety training program? ❒ Yes ❒ No
4. Does the Bidder or affected subcontractors have competent persons in the following areas (as applicable to the scope of the current Project):

A. Scaffolding	❒ Yes	❒ No	❒ N/A
B. Excavation	❒ Yes	❒ No	❒ N/A
C. Cranes & Hoists	❒ Yes	❒ No	❒ N/A
D. Electrical	❒ Yes	❒ No	❒ N/A
E. Fall Protection	❒ Yes	❒ No	❒ N/A
F. Confined Spaces	❒ Yes	❒ No	❒ N/A
G. Material Handling	❒ Yes	❒ No	❒ N/A
H. Demolition	❒ Yes	❒ No	❒ N/A

I. Steel Erection ❒ Yes ❒ No ❒ N/A
J. Underground Construction ❒ Yes ❒ No ❒ N/A

5. Does the company have a lost time injury rate and a total recordable injury rate of less than or equal to the national average for North American Industrial Classification System (NAICS) Category 23 for each of the past five (5) years? (Attach the Bidder's OSHA 300 and 300A logs for the past five (5) years) ❒ Yes ❒ No

6. Does the Bidder have an experience modifier rate of 1.0 or less? (Attach the Bidder's NCCI workers compensation experience rating sheets for the past five (5) years) ❒ Yes ❒ No

7. Has the Bidder had any OSHA inspections within the past six (6) months? ❒ Yes ❒ No
(If "YES", provide sufficient documentation to indicate the nature of the inspection, the findings, and magnitude of the issues.)

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF TRAVIS

I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my bid to be rejected.

Bidder's full name and entity status:

_____

Signature, Authorized Representative of Bidder

_____

Title

_____

Date

END

SAFETY INFORMATION FORM
Section 00415

OFFEROR MUST PROVIDE THIS FORM AND REQUIRED SUBMITTALS WITH THE RESPONSE TO THIS SOLICITATION.

Offeror Name: _____
Address: _____ **Phone:** _____
_____

1. List your company's Experience Modification Rate for the last three years:

   Year 1_____ Year 2_____ Year 3_____

2. List the following OSHA Log Information for the past three years:

	Year 1	Year 2	Year 3
A. Total Recordable Cases	_____	_____	_____
B. Lost Workday Cases	_____	_____	_____
C. Lost Workdays	_____	_____	_____
D. Total Employee Hours Worked	_____	_____	_____
E. Number of Fatalities	_____	_____	_____

3. Name your Safety Representative?

Name: _____ Phone: _____

4. Provide evidence of your supervisor and employee training for the past 12 months. Provide copies of certificates, cards, etc.

5. Include a copy of your written **Safety Program**

I hereby certify that the above information is true and correct to the best of my knowledge.

OFFEROR'S FULL NAME AND ENTITY STATUS:

_____

_____
Signature, Authorized Representative of Offeror

_____
Title Date

END

CITY OF AUSTIN

BIDDER'S AFFIDAVIT OF NON-COLLUSION,

NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING FOR

REQUEST FOR QUALIFICATIONS NO: CLMA019

FOR

Austin Film Society Austin Studios Expansion

CIP ID Number: 7524.002

State of Texas

County of Travis

The undersigned "Affiant" is a duly authorized representative of the bidder for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:

The term **"Bidder"**, as used herein, includes the individual or business entity submitting the bid and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Bidder, and anyone or any entity acting for or on behalf of the Bidder, including a subcontractor in connection with this bid.

The term "OWNER" refers to the Austin Film Society

The term "City" refers to City of Austin

1. **Anti-Collusion Statement.** The Bidder has not and will not in any way directly or indirectly:

   a. colluded, conspired, or agreed with any other person, firm, corporation, bidder or potential bidder to the amount of this bid or the terms or conditions of this bid.

   b. paid or agreed to pay any other person, firm, corporation bidder or potential bidder any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached bid or the bid of any other bidder.

2. **Preparation of Invitation for Bid and Contract Documents**. The Bidder has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying bid or contract documents., In addition, the Bidder has not otherwise participated in the preparation or development of the underlying bid or contract documents, except to the extent of any comments or questions and responses in the bidding process, which are available to all bidders, so as to have an unfair advantage over other bidders, provided that the Bidder may have provided relevant product or process information to a consultant in the normal course of its business.

3. **Participation in Decision Making Process.** The Bidder has not participated in the evaluation of bids or proposals or other decision making process for this solicitation, and, if Bidder is awarded a contract hereunder, no individual, agent, representative, consultant or sub contractor or consultant associated with Bidder, who may have been involved in the evaluation or other decision making process for this solicitation, will have any direct or indirect financial interest in the Contract, provided that the Bidder may have provided relevant product or process information to a consultant in the normal course of its business.

4. **Present Knowledge.** Bidder is not presently aware of any potential or actual conflicts of interest regarding this solicitation, which either enabled Bidder to obtain an advantage over other bidders or would prevent Bidder from advancing the best interests of OWNER or City in the course of the performance of the Contract.

5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Bidder is a City official or employee of OWNER or City or is related to any City official or employee of the City or OWNER within the first or second degree of consanguinity or affinity.

6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Bidder:

   a. does not have an employment or other business relationship with any local government officer of City or OWNER or a family member of that officer that results in the officer of family member receiving taxable income;

   b. has not given a local government officer of City one or more gifts, other than gifts of food lodging transportation or entertainment accepted as a guest, that have an aggregate value of more than $250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Bidder.

   As required by Chapter 176, Bidder must have filed a Conflicts of Interest Questionnaire with the OWNER no later than the seventh business day after the commencement of contract discussions or negotiations with the OWNER or the submission of a Bid, response to a request for proposals, or other writing related to a potential contract with OWNER. The questionnaire must be updated not later than the seventh day after the date of an event that would make a statement in the questionnaire inaccurate or incomplete. There are statutory penalties for failure to comply with Chapter 176.

7. **Anti-Lobbying Ordinance.** As set forth in paragraph 1.i. of the Instructions to Bidders Section 00100, between the date that the Invitation for Bid was issued and the date of full execution of the Contract, Bidder has not made and will not make a representation to a member of the City Council, a member of a City Board, or any other official, employee or agent of the City, other than the authorized contact person for the solicitation, except as permitted by the Ordinance.

If the Bidder cannot affirmatively swear and subscribe to the forgoing statements, the Bidder shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

Signature: _____ Date: _____

Printed Name: _____

Title: _____

Firm/Entity: _____

Subscribed and sworn to before me this ____ day of _____, 20__.

_____ My Commission Expires _____
Notary Public

BIDDER'S EXPLANATION:

_____

END

Construction Manager-at-Risk
STATEMENT OF RESPONSIBILITY
Section 00460CMR

STATEMENT OF RESPONSIBILITY
Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program

City Code Chapters 2-9A and 2-9B, as amended, establish a Minority-owned Business Enterprise and Women-owned Business Enterprise (MBE/WBE) Procurement Program in Construction and Professional Services. The aim of this program is to promote MBE and WBE participation in City procurement, through its prime contract awards and subcontracts, and to afford MBEs and WBEs an opportunity to compete for City contracts. In particular, this program encourages contractors to provide opportunities to certified MBEs and WBEs for subcontracts or related contracts. A "Subcontractor" is defined by the Ordinance and for the purposes of this form as any person or Business Enterprise providing goods, labor, or services to a contractor if such goods, labor, or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City. In accordance with City Code Chapter 2-9A, as amended, goals for MBE and WBE participation differ from contract to contract, based on the type of contract, the availability of MBEs and WBEs to perform the functions of the contract, and other factors.

Additionally, the City has determined that subcontracting opportunities will arise during the construction phase of this project; however the specific scopes of work and the magnitude of the scopes of work cannot be determined until the design for the project has been completed. When the design documents have been substantially completed, the City will establish appropriate MBE/WBE goals, and the successful Construction Manager at Risk firm shall submit a MBE/WBE Compliance Plan meeting the goals or documentation detailing their Good Faith Efforts to meet the established MBE/WBE goals.

I understand that I am responding to a Construction Manager-at-Risk Solicitation. If chosen for this Solicitation, the City of Austin will require me to comply with the standards and principles of the City's MBE/WBE Procurement Program, and this signed Statement of Commitment makes the MBE/WBE Procurement Program standards and principles a part of my contract with the City of Austin.

_____

Name and Title of Authorized Representative (Print or Type)

_____ _____

Signature **Date**

LOCAL BUSINESS PRESENCE IDENTIFICATION FORM

Section 00461

(Criteria Item 10)

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE).

NOTE: ALL FIRMS IDENTIFIED BELOW MUST BE USED ON THIS PROJECT AND MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN.

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm						
Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm						
Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

Name of Local Firm						
Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF TRAVIS

I certify that my responses and the information provided on **Form 00461** are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Section, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this Section may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my offer to be rejected.

OFFEROR'S FULL NAME AND ENTITY STATUS:

_____

_____
Signature, Authorized Representative of Offeror

_____
Title

_____
Date

Subscribed and sworn to before me this _____ day of _____, 20_____.

_____ My Commission Expires _____
Notary Public

END

NONRESIDENT BIDDER PROVISIONS

Section 00475

CIP ID Number: 7524.002

Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code § 2252.002, as amended:

A. Is the bidder that is making and submitting this bid a "resident bidder" or a "non-resident bidder"?

Answer: _____

(1) Texas Resident Bidder - A bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

(2) Nonresident Bidder - A bidder who is not a Texas Resident Bidder.

B. If the Bidder is a "Nonresident Bidder", does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the bid of a Resident Bidder of that state in order for the nonresident bidder of that state to be awarded a contract on his bid in such state?

Answer: Yes or No Which state? _____

If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a contract on such bid in said state?

Answer: _____

_____
Signature

END

CONSTRUCTION MANAGER-AT-RISK AGREEMENT

This Construction Manager-at-Risk Agreement (the "Agreement") is entered into by and between Film Society of Austin, Inc., doing business as The Austin Film Society (the "Owner") and _____ (the "CM") (sometimes referred to individually as a "Party" or collectively as the "Parties") for the construction of the Project.

ARTICLE 1. GENERAL PROVISIONS, PROJECT SCOPE, AND CONSTRUCTION COST LIMITATION

1.1 Project Scope. The Project is the **Austin Studios Expansion**. The real property on which the presently contemplated improvements are to be constructed (the "Site") is generally depicted in the **Site Plan/Location Map** attached hereto as **Exhibit 1**. The Project Scope generally consists of all labor, materials, equipment, tools, supplies, temporary facilities, and incidentals necessary to complete the construction of the improvements described in and reasonably inferable from the Contract Documents, including the supervision, coordination, and administration of the construction of such improvements (the "Work"). The Project Scope also includes the preconstruction services reasonably required for a project of this nature, size, and scope and as described herein.

1.2 Phases of Services and the Work. The services and the Work to be performed by or through the CM shall be divided into the Preconstruction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Preconstruction Phase is completed. However, no Work shall commence under the Construction Phase until a Notice to Proceed with regard to such Work has been issued by the Owner in accordance with the terms of the Contract.

1.2.1 Work Packages. It is anticipated that the Construction Phase Work may be divided into one or more separate packages (individually, a "Work Package") which identify a specific scope of Work and which will be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work. However, in the Owner's discretion, the Work may be awarded in one Work Package for the entire Project with one Guaranteed Maximum Price.

1.2.2 Work Authorization Amendment. When the Parties have identified the Work to be performed in a Work Package and have agreed on any applicable Contract Time Requirements for that Work Package and such other terms and conditions relating to that Work Package, including but not limited to a Guaranteed Maximum Price (also referred to herein as the "GMP") for the Work Package, the Parties shall enter into a Work Authorization Amendment which shall amend this Agreement and incorporate the terms thereof into the Contract. However, no Work shall commence under a Work Package until a Notice to Proceed with regard to such Work has been issued by the Owner in accordance with the terms of the Contract Documents.

1.3 Construction Cost Limitation. **There is a Construction Cost Limitation of Three Million Eight Hundred Thousand Dollars ($3,800,000.00) "Construction Cost Limitation") for the Project**, including contingencies, as described below, for the services and the Work to be performed by or through the CM for the Preconstruction Phase and the Construction Phase. The Construction Cost Limitation shall not be exceeded, except as provided herein.

1.4 Contract Amount for the Project. The Contract Amount for the Project shall be the sum of the compensation and reimbursements to be made to the CM for the Preconstruction Services and the compensation for the Construction Phase Services as established in accordance with the Contract Documents. The Contract Amount, as finally established in accordance with the Contract Documents, shall not exceed the Construction Cost Limitation, except as provided herein.

1.4.1 Contract Amount – Preconstruction Phase Services. The compensation for the services to be performed by or through the CM for the Preconstruction Phase shall be a stipulated sum (the "Preconstruction Phase Fee") as set forth in Section 7.2.1 below, subject to such adjustment only as provided by the terms of the Contract and payable as set forth in this Agreement. CM shall also be entitled to reimbursement of certain costs and expenses incurred in the performance of the Preconstruction Phase Services (the "Preconstruction Phase Reimbursables") as set forth and limited in Sec. 7.2.1.1 below.

1.4.2 Contract Amount – Construction Phase. The compensation for the Work to be performed by or through the CM for the Construction Phase shall be as set out in Section
7.2.2 below and shall be subject to a Guaranteed Maximum Price established in accordance with Sec. 7.4 below. To the extent that the Construction Phase consists of multiple Work
Packages, each such Work Package shall be subject to a Guaranteed Maximum Price as established in accordance with Sec. 7.4 below. The sum of the Guaranteed Maximum Prices for all Work Packages shall not exceed the Guaranteed Maximum Price for the Construction Phase.

1.5 Owner's Design Professionals. Owner has retained the services of the following identified architectural and/or engineering firms to perform those professional design services identified below. Owner expressly reserves the right to replace or modify the responsibilities of any such firms identified below or to retain additional firms in Owner's sole discretion. Owner shall provide prompt written notice to CM of any replacement of existing firms, addition of new firms, and material modifications of the responsibilities of existing firms that might impact the CM with regard to the services to be performed or obligations of the CM arising from the Contract.

(To be determined)

Collectively, the primary architectural and engineering firms are referred to herein as the "Principal Architects/Engineers". References to the Principal Architect/Engineer (in the singular tense) shall mean that primary architectural and/or engineering firm that has primary responsibility for the design and any construction administration obligations over the respective scope of the Work. Each Principal Architect/Engineer shall be responsible for those consultants and subconsultants retained by the respective Principal Architect/Engineer to provide the architectural and engineering services required in its agreement with the Owner. Except as otherwise expressly provided, references to the "A/E", the Engineer, or the Architect in the Contract Documents shall mean the Principal Architect/Engineer.

ARTICLE 2. CONTRACT TIME

2.1 Date of Commencement. The Preconstruction Phase Services shall commence after this Agreement has been fully executed by the parties and upon the CM's receipt of Owner's Notice to Proceed, unless the Parties otherwise mutually agree in writing.

The Construction Phase Work shall commence upon the issuance of the Owner's Notice to Proceed with the specific scope of the Work stated therein, unless the Parties otherwise mutually agree in writing.

2.2 Project Schedule. Attached hereto as **Exhibit 2** is the **Project Schedule** which sets out the commencement dates and completion times for the currently scheduled Phases and, as applicable, Work Packages for the Project. The Parties hereto acknowledge that the Project Schedule will be subject to change and refinement during the course of the design of the Project as may be agreed by the parties by written amendment to this Agreement or as directed by the Owner pursuant to a Change Directive issued in accordance with the Contract Documents.

2.3 Contract Time Requirements. Time is of the essence of the Contract and CM's obligations arising hereunder. CM shall diligently and efficiently perform the services and furnish the Work as required hereunder within the Contract Time Requirements set forth in the Project Schedule, as amended in accordance with the Contract Documents, as well as such other Contract Time Requirements set forth in the Contract Documents, including achieving Substantial Completion and Final Completion of the Work of each Work Package and the entire Work as required in the Contract Documents and meeting all Milestone requirements (if any).

2.3.1 Contract Time Requirements -- Preconstruction Phase Services. Without limiting the foregoing, CM shall perform its Preconstruction Phase Services diligently and efficiently in compliance with the Project Schedule, as it may be amended in accordance with the Contract Documents.

2.3.2 Contract Time Requirements -- Construction Phase. The Contract Time with regard to each Work Package of the Construction Phase shall be measured from the Date of Commencement of the respective Work Package as stated in the respective Work Authorization Agreement.

2.3.2.1 The CM shall diligently prosecute the Work and achieve Substantial Completion of the Work within the Contract Time Requirements set forth in the applicable Work Authorization Amendment, subject to adjustments as provided in the Contract Documents. After Substantial Completion, the CM shall diligently continue to prosecute the Work to Final Completion and, except as otherwise expressly agreed in the applicable Work Authorization Amendment, shall achieve Final Completion not later than (45) calendar days from the Date of Substantial Completion.

2.3.2.2 Certain scopes or specific areas of the Work may be required in the Project Schedule for early Substantial Completion ("Milestones") sufficient to allow for installation of Owner's equipment, phased use or partial occupancy of the facility, or coordination with other work relating to the Project by the Owner or its Third Party Contractors. The parties acknowledge that a Work Authorization Amendment or Modification of the Agreement may add or modify existing Milestones. The Milestones made a part of the Contract are critical elements of the Contract Time Requirements under the Contract and are "of the essence" of the Contract.

2.3.2.3 In the event that CM intends to request an increase in the Contract Amount or Contract Time as a result of a modification or revision of the Milestones or the Project Schedule, the CM shall strictly comply with the applicable notice requirements for changes in the Contract Amount or the Contract Time as set forth in the General Conditions. If CM fails to provide such notice as required in the General

Conditions, but in no event later than twenty-one (21) days after receipt of Owner's notice with regard to the modification or revision of the Milestones or the Project Schedule, the CM shall be deemed to have waived any right to seek or recover an increase in the Contract Sum or Contract Time as a result thereof.

2.3.2.4 In the event CM shall fall behind schedule for any reason which does not justify an extension under the Contract Documents of the Substantial Completion Date or any other Contract Time Requirements, CM shall submit a Recovery Schedule pursuant to Section 6.5 below. No approval or consent by the Owner or any plan for re-sequencing or acceleration of the Work submitted by CM pursuant to this Section and Section 6.5 below shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such re-sequencing or the failure of the CM to meet the Substantial Completion Date or any other Contract Time Requirements.

2.3.2.4.1 Owner shall additionally be entitled to direct the acceleration or re-sequencing of the Work in order to achieve completion prior to the required date for Substantial Completion or to meet any other Contract Time Requirements of the Contract, and CM shall be reimbursed for the amount of the premium portion of overtime actually incurred in respect thereto and shall be entitled to an increase adjustment to the Contract Sum to the extent of the premium portion of overtime so incurred. Before proceeding with any such Owner-directed acceleration plan under this subsection, the CM shall have received the Owner's prior written approval of the plan and its anticipated not-to-exceed cost.

2.3.2.5 Except as provided in Article 12 of the General Conditions, adverse weather conditions are not anticipated to impact the progress of CM's work. However, CM will record on a daily basis whether its job progress has been materially affected by such conditions. Any such day lost due to adverse weather conditions shall be made up by CM performing work on the ensuing Saturday or by extended hours during that week or with best efforts the ensuing Sunday, and treating such as a work day for the purpose of complying with and meeting CM's Progress Schedule and the applicable Contract Time Requirements, it being understood that no application for extension of time will be made unless the critical path of the project is materially affected. The CM will provide written explanation and CPM schedule evidencing such impact has occurred. CM will notify Owner of any such delay in writing, and on a monthly basis submit a report to the Owner substantiating any days claimed to have been lost over and above those allotted for in the Progress Schedule, due to adverse weather conditions.

2.3.2.6 The CM acknowledges and agrees that, if the CM fails to achieve Substantial Completion of the entire Work within the Contract Time as established by the appropriate Work Authorization Amendment or Modification of the Agreement, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and CM agree that, if the CM shall neglect, fail, or refuse to achieve Substantial Completion of the entire Work by the date required by the Contract Documents for Substantial Completion of the entire Work, subject to adjustments in the Contract Time as provided in the Contract Documents, then the CM (and the CM's Surety, if any, in the case of default) agrees to pay to the Owner as Liquidated Damages, and not as a penalty or forfeiture, **$2,810.00 per calendar day** for each day of such delay. Such Liquidated Damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work. Such Liquidated Damages shall be in lieu of all consequential damages, including any loss of use or

capital, resulting from CM's delay in performance, except as otherwise provided in Section 6.14.5 of the General Conditions, but shall not be in lieu of any actual, direct costs incurred by Owner in supplementing, accelerating, completing or correcting the Work resulting from CM's breach of its obligations arising under the Contract, including all design and consulting costs also arising therefrom. The Owner may deduct Liquidated Damages described in this Subsection from any unpaid amounts then or thereafter due the CM under this Agreement. Any Liquidated Damages not so deducted from any unpaid amounts due the CM shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the highest lawful rate of interest payable by the CM.

2.3.2.6.1 To the extent that the parties enter into a Work Authorization Amendment for a portion of the Work (a Work Package for less than the entire scope of the Work), the parties may agree therein to a required Substantial Completion Date for such portion of the Work and separate Liquidated Damages for the CM's failure to achieve Substantial Completion of such portion of the Work within the Contract Time Requirements provided therein. The Liquidated Damages set out in a Work Authorization Agreement for a portion of the Work shall be in an amount which bears the same ratio to the Liquidated Damages for the entire Work as set forth in Section 2.3.2.6 above as the estimated Cost of the Work of that Work Package (as reflected in the GMP Proposal) bears to a reasonable estimate of the Cost of the Work of the entire Project.

2.3.2.7 Notwithstanding anything to the contrary contained herein, the maximum amount of Liquidated Damages that may be assessed against and paid by CM shall not exceed in the aggregate the amount of the sum of the CM's Preconstruction Phase Fee and the CM's Construction Phase Fee as set forth in Section 7.2 below, prior to any adjustment as authorized by the Contract Documents. This maximum amount of damages shall not apply to the amount of delay damages recoverable by the Owner in an action brought against the CM for delay in achieving Substantial Completion as required herein in the event that the Liquidated Damages are held by the applicable court or arbitration panel to be unenforceable as a penalty, except where the Liquidated Damages are held to be unenforceable as a result of a legal challenge in such action by the Owner.

2.3.2.8 Notwithstanding any term of the performance bond furnished by CM pursuant to the terms of this Agreement, CM's performance bond sureties expressly agree and acknowledge that their obligations under the performance bond include the obligation to reimburse or pay Owner that amount of any unpaid or unreimbursed Liquidated Damages incurred by CM pursuant to the terms hereof and subject to the penal limits of the bond.

2.3.2.9 This provision for Liquidated Damages shall only become operative upon the establishment of the GMP for the applicable Work covered by the Liquidated Damages, and, except as otherwise agreed in writing by the parties, CM shall have no liability for Liquidated Damages or any other delay damages, if Owner and CM are unable to agree upon a GMP for the applicable Work covered by the Liquidated Damages. In addition, Owner shall waive those Liquidated Damages arising from a delay in achieving Substantial Completion of any Work Package, other than the final Work Package, for the first thirty (30) days of any such CM delay under the respective Work Authorization Amendment.

ARTICLE 3. CM STATUS AND REPRESENTATIONS

3.1 CM Duties. CM agrees that Owner is entering into this Agreement in reliance on CM's special and unique abilities with respect to construction management. The CM accepts the relationship of trust and confidence established by this Agreement. CM agrees to use its good faith best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the prevailing standards of CM's profession and business. CM warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent its performance of the Work required hereunder.

3.1.1 Legal Requirements. CM shall perform its services and furnish its Work in compliance with the Legal Requirements applicable to the Project.

3.2 Representations. The CM warrants, represents, covenants, and agrees that all of the Work to be performed by the CM will be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.

3.3 Licenses and Registrations. The CM warrants that it and its employees and subcontractors have any and all licenses and registrations required for the performance of the Work.

3.4 Efficiency. The CM agrees to furnish business administration and superintendence in the performance of the Work in the best and most efficient way and in the most expeditious and economical manner consistent with the interests of Owner.

3.5 No Third Party Liability. Except for the obligation of Owner to pay CM hereunder and to perform certain other obligations hereunder, Owner will have no liability to CM or to any third party claiming through or under CM by reason of the execution or performance of this Agreement or the Contract Documents. In addition, neither Owner, nor its agents, officers, and employees, will have any personal liability to CM or to any third party claiming through or under CM by reason of the execution or performance of this Agreement or the Contract Documents.

3.6 Entity Status. CM must be a fully capitalized, legal business entity acceptable to Owner at all times during the term of this Agreement. In the event that the CM is a joint venture or partnership, each separate business entity participating in the joint venture or partnership must be jointly and severally responsible for all rights, duties, and liabilities of the joint venture or partnership and the joint venture or partnership must provide the project specific insurance set forth in the Supplemental General Conditions to the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

4.1 The Contract Documents are to be comprised of the following:

4.1.1 All Modifications to this Agreement;

4.1.2 This Agreement, including all Exhibits attached hereto and such other documents, if any, which by the express terms of this Agreement are incorporated into this Agreement;

4.1.3 The Supplemental General Conditions to the General Conditions of the

Contract (if any) (also referred to as the "Supplemental General Conditions");

4.1.4 The General Conditions of the Contract (also referred to as the "General Conditions");

4.1.5 The Construction Documents (as defined in the General Conditions) prepared and approved in accordance with the Contract Documents; and

4.1.6 The following other documents, if any:

.1 other documents contained in the Project Manual and not otherwise specifically referenced above;

.2 those current City of Austin Standard Contract Documents (individually referred to as "City Standard Document") when referenced in the Contract Documents by Section Number (such as "City Standard Document Section 00830" which references the Wage Rates and Payroll Reporting document);

.3 the Request for Qualifications Documents, specifically including the MBE/WBE requirements; and

.4 the CM's Response to Request for Qualifications/Proposals of Owner.

The Contract Documents are intended to permit the Parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price and are intended to include all design, architecture and engineering, materials, equipment, labor and services of every kind necessary for the proper execution of the Work and the terms and conditions of payment for the Work.

4.2 Rules of Interpretation. The following rules shall govern interpretation of the Contract Document:

4.2.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. Additionally, what is required by any of them shall be deemed to be required by all of them.

4.2.2 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents that cannot be harmonized so as to avoid conflict, the Contract Documents shall take precedence in the order in which they are listed in Section 4.1 above.

4.2.3 With regard to Modifications, the most recently issued Modification takes precedence over previously issued Modifications or the Contract Documents modified.

4.2.4 Figures given on Drawings govern scale measurements, and large scale details govern small scale Drawings.

4.2.5 The organization of the specifications into divisions, sections, and articles, and the arrangement, titles, and numbering system used for the drawings, shall not determine the division of the Work by CM among its Subcontractors, nor establish the extent of the Work to be performed by any Subcontractor of any tier. Such matters shall be the responsibility of the CM in accordance with this Agreement.

4.3 Meanings of Terms. Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract, unless otherwise specified herein.

4.4 Subsidiary Work. If an item or system is either shown or specified by the

Contract Documents, all material, equipment, and labor required for the proper installation of such item or system and needed to make a complete operating installation must be provided whether or not fully detailed or specified in the Contract Documents, and shall be considered as subsidiary to the Work, to the extent such complete operating installation can be reasonably inferred by the Contract Documents. No Claim to increase the Contract Amount for such subsidiary work will be allowed.

ARTICLE 5. PRECONSTRUCTION PHASE SERVICES

CM shall perform the following Preconstruction Phase Work, and shall continue to provide the required services as needed throughout the duration of the Contract:

5.1 General Coordination.

5.1.1 Team Meetings. Attend regular meetings with the Project Team during the Construction Document review to advise them on Site considerations, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment.

5.1.2 Recommendations and Information. Provide recommendations and information to the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; development of a safety plan and responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the CM and Owner's Third Party Contractors, if any; cost factors, including costs of alternative materials and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the Contract Documents; and any other matters necessary to accomplish the Work in accordance with the Project Schedule and the Contract Amount.

5.1.3 Public Hearings. At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

5.1.4 Decision Tracking Report. Create and continuously update a "Decision Tracking Report," which records all Work issues and the decisions in a format acceptable to Owner. The updates must be done at least monthly immediately prior to the Application for Payment.

5.1.5 Partnering. Develop a Partnering Program for Owner's approval, using Owner's most current Partnering Guidelines Manual to provide the framework for CM's Partnering Program. At a minimum, the Partnering Program must include quarterly partnering meetings after commencement of the Construction Phase. Publish and distribute meeting minutes to all attendees. Partnering meetings will include the Major Subcontractors during their respective performance of the Work during the Construction Phase.

5.1.6 Permits, Licenses, Fees. Confirm that all approvals, reviews, permits, licenses that are required for construction of the Work to commence have been received.

5.1.7 Pre-Construction Schedule, Progress Schedule, and Submittal Schedule.

5.1.7.1 Within thirty (30) days from the commencement of the Preconstruction Phase Services, develop a **Pre-Construction Schedule** consistent with the Project Schedule for Owner's review and approval with input from Owner, the A/E, and Owner's Representative, which will include the activities of CM, Owner, Owner's

Representative and the A/E during the Pre- Construction Phase. Owner is responsible for obtaining the performance of Owner's Representative and the A/E.

5.1.7.2 Within thirty (30) days from the commencement of the Preconstruction Phase Services, CM shall submit to Owner or Owner's Representative a preliminary **Progress Schedule** for both the Pre-construction and Construction Phases of the Project consistent with the Project Schedule and in a form reasonably acceptable to Owner's Representative. Said preliminary Progress Schedule shall include, but not be limited to, the durations for all major items of Work to be performed; the start and finish date of all such activities; and the Contract Time Requirements for the Construction Phase of the Project, including the Work Packages, as set out in the Contract Documents. Within thirty (30) days from the submission of the preliminary Progress Schedule, CM shall submit to Owner's Representative for approval, a more detailed Progress Schedule, which will be a Critical Path Method (CPM) schedule depicting all significant activities which will occur on the Project; the duration of such activities; the start and finish dates of such activities; the Contract Time Requirements as set out in the Contract Documents; and the precedence logic of such activities. CM shall submit to Owner's Representative updated Progress Schedules each month to reflect actual progress made and to forecast future progress of the Work. Prior to the commencement of the Work under a Work Package, CM shall submit to Owner and Owner's Representative a cash flow projection depicting the estimated projected monthly cash flow for the Work to be performed pursuant to such Work Package. Such projection shall be updated on a monthly basis.

5.1.7.3 Coordinate all Submittal Schedules for Shop Drawings and Samples required by Division 1. These Submittal Schedules must provide a method for reviewing and processing the required Submittals via Owner's Digital Control System.

5.1.8 List of Personnel and Subcontractors. The CM's key personnel, staff, and their respective duties, are identified in the attached and incorporated **Exhibit 3**. Upon proposing the GMP Proposal for any Work Package and when subsequently proposing other Construction Trade Packages within a Work Package, CM must submit an updated **Exhibit 3** listing all Subcontractors and consultants, if any, and their respective key personnel and salaried specialists and their respective duties, to be contracted with for portions of the Work**.**

5.1.9 Consultation. CM shall consult with Owner's Representative, the A/E, and Owner during the development of design and provide them with recommendations on improvements, construction phasing, selection of materials, building systems and equipment. CM shall provide consultation and recommendations on construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost including estimated costs of alternative designs or materials, preliminary budgets and value engineering alternatives. Any material or system proposed by CM, upon acceptance by Owner, Owner's Representative, and the A/E shall be incorporated into the Contract Documents. CM shall review the drawings and specifications when they are furnished to CM, recommending alternative solutions throughout the Pre-Construction Phase regarding construction feasibility, cost, or schedule. CM shall endeavor to provide advice on ways to reduce the construction costs and conform to (and, if possible, shorten) the schedule, without reducing design quality. CM and Owner acknowledge Section 361.426 of the Texas Health & Safety Code which requires giving preference to products made of recycled materials, if the products meet applicable specifications.

5.1.10 Conditions and Limitations of the Work. CM acknowledges that prior to the submission of the GMP Proposal for any Work Package that it will have satisfied itself, through on-site visits and examination and comparison of survey information,

geotechnical reports, and the Construction Documents then made a part of the Contract Documents, as to the conditions and limitations under which the Work under the Work Package is to be performed, including, without limitation: (1) the location, condition, layout and nature of the Site and surrounding areas, including (without limitation) all property lines, visible utility locations, existing improvements, elevations, and other observable physical conditions of the Site and surrounding areas; (2) generally prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; and (5) other similar issues.

5.2 Constructability Review of Contract Documents.

5.2.1 Mission. Implement and conduct a constructability review of all Contract Documents employing a systematic analysis process that is used throughout private industry and governmental agencies for projects of the Project's nature, size, and scope. The constructability review services required herein are intended to be comprehensive of the Work to be performed with regard to each Work Package and must be completed prior to the commencement of the Work under the respective Work Package, unless otherwise approved by Owner.

5.2.2 Review. CM agrees to conduct a constructability review to examine all Contract Documents, including without limitation, the Construction Documents, to ensure that the respective scope of the Work under a Work Package will be completed with a minimum of delays from excessive requests for information and Change Orders once the Work under the Work Package is under construction. The review, at a minimum, must evaluate the workability of interrelated systems between civil, architectural, structural, mechanical, and electrical Drawings and Specifications, and review A/E's scheduled installation durations against actual installation requirements for systems integration, to ensure coordination between different design disciplines. Conduct a comprehensive analysis of the Construction Documents to ensure coordination of all systems in determining the ease of constructability and cost effectiveness of building the Project. If in reviewing the Contract Documents the CM discovers any Discrepancies, the CM must immediately notify the Owner and A/E about the Discrepancies.

5.2.3 Report. Prepare a "Constructability Review Report," which outlines items that in the CM's opinion may cause problems in the way the Project is proposed to be constructed and which will document any Discrepancies and potential problems with the Construction Documents that, if left unattended, may result in ineffective or inefficient constructability, Change Orders, or Claims once Project construction commences.

5.2.4 Propose Solution. CM shall propose the most practical solution to resolve the Discrepancies and potential problems. Additionally, CM shall recommend alternative design suggestions for consideration and document potential savings that require the minimum impact to the Project Schedule and Contract Amount and further the best interest of the Project.

5.2.5 Respond to Solution. The Owner and A/E will evaluate the proposed solution and provide a response to CM. If the approved solution prompts changes to the Contract Time or Contract Amount, the Contract will be adjusted under in accordance with the General Conditions.

5.3 Discrepancies.

5.3.1 Failure to Report or Get Response. If CM performs the Work without reporting Discrepancies or getting a response to its proposed solution to resolve a Discrepancy, the CM will be responsible for all cost of remedying the Work resulting

therefrom.

5.3.2 Assumption of Risk. CM assumes the risk of reviewing the Construction Documents for Discrepancies and potential problems and will not be entitled to any extensions of the Contract Time or to any adjustment of the Contract Amount on grounds that it misinterpreted or misunderstood any matter that could, or should reasonably, have been raised by the constructability review. CM assumes all risks accepted and obligations undertaken by it under the Contract Documents, except for concealed conditions or conditions that could not have been reasonably anticipated or discovered. Owner shall not be responsible for any damages resulting from a Discrepancy and CM will not be entitled to a Claim for adjustment in Contract Time or Contract Amount resulting from a Discrepancy unless the CM advises Owner in writing of the Discrepancy and potential problem and proposes a solution as required herein and Owner confirms in writing that it wishes the CM to proceed in accordance with the Contract Documents as originally given.

5.3.2.1 Assumption. In contracting with the A/E, the Contractor and all professionals, Austin Film Society will require that each contract, including the Identified Documents, provide that it may be, but is not required to be, assumed by the City in the event of a termination of the Lease due to an uncured default by Austin Film Society or, at the City's option, upon failure of Austin Film Society's completion of the Improvements during the term of the contract.

5.4 Value Engineering.

5.4.1 Limited Value Engineering. Whenever the term "Value Engineering" is used in conjunction with the Contract Documents or the Work, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any Value Engineering activities constitute the professional practice of engineering, then such activities must be performed by an engineer licensed in Texas. A/E and Owner and, to the extent applicable, their other third party consultants, may have already conducted a separate Value Engineering Review. The time to perform Pre- Construction Phase services does not allow for an extensive revision and redesign of the Project. However, the Owner is willing to consider additional Value Engineering recommendations proposed by the CM, to the degree that they can be accomplished in the time allowed and to the extent that any proposed changes can be accomplished with limited revisions to the Contract Documents. Additionally, to the extent that CM's estimated construction costs exceed the Construction Cost Limitation (or any applicable portion thereof) or the Construction Costs Fixed Limit established by an IGMP, CM shall exercise best efforts to propose Value Engineering solutions to bring such construction costs within any applicable Limit. Value Engineering activities must be performed concurrently with and without delay to the Contract Time Requirements for the Project, including the Milestones.

5.4.2 VEP Preparation. As a minimum, the CM shall include the following information in each Value Engineering Proposal ("VEP"):

5.4.2.1 A description of the difference between the existing and proposed design, the comparative advantages and disadvantages of each, a justification when an item's function is being altered, the effect of the change on system or facility performance;

5.4.2.2 A list and analysis of design criteria or specifications that must be changed if the VEP is accepted;

5.4.2.3 A separate detailed estimate of the impact on project cost of each VEP, if accepted and implemented by the Owner; and

5.4.2.4 A description and estimate of costs the Owner may incur implementing the VEP, such as design change cost. (A/E will be directed to provide input on the estimate.)

5.4.4 VE Review and Approval. The proposed Value Engineering solutions will be promptly reviewed by A/E, whose review will consider all Project areas implicated in the proposed VE solution(s) and will make a recommendation to the Owner. Owner will promptly approve or reject A/E's recommendations. The A/E will incorporate any approved VE solutions into the Contract Documents.

5.5 Budget, Cost Estimating, and Cost Control.

5.5.1 Preliminary Cost Estimating. Within (30) calendar days from the commencement of the Preconstruction Phase Services, the CM shall prepare, for the review of the A/E and approval of the Owner, a Preliminary Cost Estimate for the Work of the Project in reasonable detail and in compliance with Section 5.5.2 below and based upon the Drawings and Specifications and such other Construction Documents approved by the Owner for cost estimating and such other information furnished by the A/E and the Owner, utilizing area, volume or similar conceptual estimating techniques for the Work.

5.5.1.1 In addition to the foregoing, when Schematic Design Documents have been issued by the A/E for the entire Work or for any Work Package and approved by the Owner for cost estimating, the CM shall prepare, for the review of the A/E and approval of the Owner, a cost estimate for the Work or the respective portion thereof in reasonable detail and in compliance with Section 5.5.2 below, with such supporting data as reasonably requested by Owner. During the preparation of the Design Development Documents, the CM shall update and refine this estimate at appropriate intervals agreed to by the Owner and CM.

5.5.1.2 CM shall provide such additional cost estimating as may be required for preparing the GMP Proposal for the Work and each Work Package as directed by the Owner and as provided in Article 7 below.

5.5.2 Cost Management Report. With regard to each preliminary cost estimate CM is required to provide, including the pricing for the Initial Guaranteed Maximum Price (IGMP) and GMP Proposals for each Work Package as required in Section 7.4.1 below, the CM shall provide a Cost Management Report that compares Owner's Construction Cost Limitation for the Work to CM's estimated construction costs. If CM's estimated construction costs would reasonably cause the Owner's Construction Cost Limitation for the Project or for any Work Package (to the extent that a Construction Cost Limitation for the Work Package has been established in the Contract Documents) to be exceeded, CM shall develop reasonable strategies to be reviewed by the A/E and approved by the Owner to reduce the costs estimated to be incurred during all stages of the Construction Phase of the Work.

5.5.3 Schedule of Values. As part of the negotiation of the Guaranteed Maximum Price for each Work Package, CM shall provide an initial Schedule of Values for that scope of the Work. Owner will review the initial contents and format for the Schedule of Values after receipt and suggest any revisions or request any additional information. Further, the Schedule of Values will conform to the requirements of Division 1, will be subdivided into component parts in sufficient detail to serve as the basis for Progress Payments during the Project, and will be updated as needed, but at least monthly prior to submitting each Application for Payment.

5.5.4 Procurement and Estimates. CM shall prepare and be responsible for all Subcontractor procurement and construction cost estimates.

5.5.5 Advice; Recommendation-Contract Amount and Contract Time. CM shall advise the other members of the Project Team immediately, if at any time the CM has knowledge or belief that the Contract Amount or Contract Time Requirements will not be met, and make recommendations to the Project Team for corrective action to bring the costs down or to bring the Project back on Schedule.

5.6 LEED™. CM shall develop a Leadership in Energy & Environmental Design (LEED™) management implementation plan, documentation, and tracking methodology acceptable to Owner.

5.7 Construction Planning.

5.7.1 Procurement Plan. CM shall provide to Owner for review and approval a "Procurement Plan" which contains the CM's procurement process and procedures. It should contain information such as identification of long lead items, recommended phased construction, identification of work to be bid or acquired by Competitive Sealed Proposal method including evaluation criteria and award factors, identification of work to be self- performed, solicitation documents and subcontractor agreements and forms, scoring matrix and evaluation method, bid award process, outreach efforts and initiatives to ensure MBE/WBE compliance, and solicitation schedule. Solicitation schedule should include key dates and milestones such as advertisement dates, bid openings, IGMP and GMP Proposal dates, GMP review period, proposed milestone review dates and approvals and any other information relative to the CM's procurement process.

5.7.2 Long Lead Items. Identify any equipment, materials, or other components of the Work for which orders must be placed in advance of the commencement of the respective Work in order to achieve the applicable Contract Time Requirements and to protect the Owner from excessive cost escalations ("Long Lead Items") and expedite the procurement by both CM and Owner of Long Lead Items to ensure delivery and installation for all Construction Trades Packages by the dates provided on the Progress Schedule and within the applicable Contract Time Requirements.

5.7.3 Assistance. If requested and approved by Owner, participate with A/E in preparing performance specifications and requests for technical proposals for the procurement and installation of systems and components.

5.7.4 Phased Construction. CM shall make recommendations to the Owner and A/E regarding the phased issuance of Drawings and Specifications to modify the existing schedule of the Work Packages or to add Work Packages to facilitate construction of the Work, if such modifications or additions are appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

5.7.5 Issue Requests. As requested and approved by Owner, issue invitations for bids and/or requests for technical proposals to qualified sources and receive bids and/or proposals and assist in their evaluation.

5.7.6 Pre-bid and/or Pre-proposal Conferences. Schedule and conduct pre-bid and/or pre-proposal conferences with interested proposers, subcontractors, material suppliers, and equipment suppliers, and record minutes of same.

5.7.7 Bids and/or Competitive Sealed Proposals. The Owner requests and requires that all bids or proposals be made available to the Owner and the

Principal Architect/Engineer in accordance with the following process and procedures.

5.7.7.1 CM Solicitation. In coordination with Owner and in accordance with*Texas Local Government Code* Chapter 252 and/or Section Texas Government Code 2269.255-256, CM shall CM shall develop Subcontractor interest in the Project, and each respective Work Package, and, as the Construction Documents are completed, publicly advertise and solicit bids and/or competitive sealed proposals from Subcontractors to perform all major elements of the Work other than the minor work that may be included in CM's General Conditions Costs. CM shall conduct pre-bid and/or proposal conferences in order to explain the scope of the available work to interested Subcontractors. In the case of competitive sealed proposals, CM and Owner shall jointly agree on the criteria for determination of best value for award of competitive sealed proposals. CM shall receive and open all such Subcontractor proposals in a manner that does not disclose the contents of the proposals during the selection process. Owner and A/E shall attend the opening of all bids and/or competitive sealed proposals. CM shall comply with the Owner's M/WBE Ordinance and Procurement Program policies and procedures in evaluating the impact of each Subcontractor selection to the Compliance Plan. All proposals will be made public within seven Calendar Days after the date of final selection. CM will follow this process in the development of each Construction Trades Package for each Work Package. CM shall submit CM's standard form of subcontract for the Project to Owner for review and approval in order to verify that it contains provisions required by the Contract Documents that are protective of the interests of Owner and conforms to the requirements of the Contract Documents. Subcontracts shall not be awarded on the basis of cost of the work plus a fee without the prior written consent of Owner's Representative.

5.7.7.2 CM Self-Perform. CM may seek to perform portions of the Work itself, other than the minor work that may be included in the CM's General Conditions Costs, if CM submits its proposal for those portions of the Work in the same manner as all other Subcontractors. If CM intends to submit a proposal for such Work, it shall notify Owner prior to soliciting proposals and all such bids and/or sealed proposals will be submitted directly to Owner or its designated representative. If Owner determines that CM's proposal provides the best value for Owner, CM will be awarded that portion of the Work. Owner's determination in such matters is final.

5.7.7.3 Alternate Subcontractors. If CM reviews, evaluates, and recommends to Owner a proposal from any Subcontractor, but Owner requires a proposal from another Subcontractor to be accepted, then, pursuant to the terms of the Contract, Owner shall compensate CM by a change in price, time, or Stipulated Sum for any additional cost and risk, which has been demonstrated to Owner's satisfaction, which CM may incur because of Owner's requirement that another Subcontractor proposal be accepted.

5.7.7.4 Scoring. CM must provide Owner and A/E with its completed scoring matrix, or other similar tool used for evaluating responses in a form to be approved by Owner, for each Construction Trades Package and which shows the score for each Subcontractor that submits a response to a competitive sealed proposal.

5.7.8 M/WBE Compliance. Comply with the City's M/WBE Ordinance by implementing and monitoring the M/WBE Procurement Program. Meet Project M/WBE goals and/or make a good faith effort to do so, and complete the Compliance Plan.

5.7.9 Quality Control Plan. Develop a quality control Work plan to assure requirements of the Contract Documents are met with a minimum of remedial work. The CM will plan for scheduling all needed tests with Owner, Owner's Third Party Contractors and consultants and any applicable testing agencies.

5.7.10 Temporary Site Facilities. CM shall review the Contract Documents to ensure that adequate temporary facilities are provided as necessary to enable the Subcontractors to perform their work and provisions have been made for all Project Site facilities necessary for CM to manage, inspect, and supervise the Work. Further, CM shall provide Owner's Third Party Contractors: access to the Site; access to the sanitary facilities; access to temporary water and power on Site; and access to the Site for minor storage. CM is not required to provide storage containers or large storage space, office trailers, dumpsters for recycling, or hauling services for Owner's Third Party Contractors or Consultants, unless CM and Owner otherwise agree.

5.7.11 Safety Plans. CM is responsible for initiating, maintaining, and supervising all safety programs and precautions as required by the Contract Documents.

5.7.12 Labor Analysis. Provide an analysis of the types and quantities of labor required for the Work and review the appropriate categories of labor required for critical stages of the Work. Make recommendations for actions that will minimize adverse effects of labor shortages on the Progress Schedule.

5.7.13 Division of Work. CM shall make recommendations to Owner through Owner's Representative and the A/E regarding the division of Work in the Drawings and Specifications, taking into consideration such factors as time of performance, availability of labor, impact on M/WBE involvement, overlapping trade jurisdictions, and provisions for temporary facilities.

5.8 Owner's Third Party Contracts. Consult with and make recommendations to the Owner, the A/E, and any applicable Owner's Third Party Contractors on the acquisition schedule for (as applicable) fixtures, furniture, equipment, materials, information technology systems, and other systems. Coordinate the purchase, delivery, and installation of such items in accordance with the Progress Schedule as may be required to meet applicable Substantial Completion.

5.9 Failure to Perform Preconstruction Phase Services.

5.9.1 If CM fails to timely perform any of the Preconstruction Phase Services set out herein, and if, in the Owner's judgment, Owner determines that the Project is not on schedule, the Owner shall notify CM who must immediately provide Owner and A/E with a recovery schedule. The recovery schedule must include any and all actions necessary to get the Project back on schedule and may include any of the following items or such similar measures, and which must remain in effect until the progress of the Work is back on schedule in Owner's sole judgment.

5.9.1.1 An increase in staff resources having the expertise necessary to assist CM's Key Personnel to perform the required services;

5.9.1.2 An increase in office equipment or tools, including computers, software, telephones, faxes, etc., as needed to expedite delivery of the required services; and

5.9.1.3 An increase in hours of Work or number of shifts.

5.9.2 CM is not entitled to an increase in Contract Amount for any additional effort it applies to the Work under this Section 5.9.

5.9.3 Failure to immediately act to provide a recovery schedule for Owner's approval or to implement an approved recovery schedule, is grounds for termination for cause.

ARTICLE 6. CONSTRUCTION PHASE RESPONSIBILITIES

The Preconstruction Phase will overlap into the Construction Phase, and CM will provide those services as required throughout the duration of the Contract. Additionally, the CM will perform the services in the Construction Phase as set forth in this Article 6 and elsewhere in the Contract Documents.

6.1 General Coordination.

6.1.1 Coordination. In consultation with Owner, establish and implement procedures for coordination among the Project Team, Subcontractors, Owner's Third Party Contractors, A/E, and other consultants, including coordinating installation of any Owner-procured material and equipment. CM shall provide recommendations and information to the other members of the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; development of a safety plan and responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the CM and Owner's Third Party Contractors, if any; cost factors, including costs of alternative materials and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the Contract Documents; and any other matters necessary to accomplish the Work in accordance with the Contract Time Requirements and the Contract Amount.

6.1.2 Meetings. CM shall attend Owner's weekly progress meetings, and fully advise the Project Team at such meetings as to Project status, especially with regard to the Progress Schedule. At each weekly progress meeting, CM shall prepare and distribute an excerpt from the Progress Schedule setting forth the Work activities for the next three weeks. Attend all other called Project meetings with Project Team members.

6.1.3 Agenda and Minutes. Prior to each weekly progress meeting, A/E will prepare and distribute a written agenda for the meeting. A/E will record and distribute the minutes of each meeting. A/E will also prepare agendas and minutes for all other called meetings. Review the agendas and minutes and provide comments, if any.

6.1.4 Public Hearings. At Owner's request, CM shall attend public meetings and hearings concerning the development and schedule of the Project.

6.1.5 Decision Tracking Report. CM shall continuously update a "Decision Tracking Report," which records all Work issues and the decisions on how to resolve each one. At Final Completion of the Work, the Decision Tracking Report will provide a final and complete record of each Work issue and decision and will be provided to Owner. The updates must be done at least monthly immediately prior to the then current Application for Payment.

6.1.6 Partnering. CM shall plan, coordinate, and conduct quarterly Partnering sessions with all appropriate Project Team members, including Major Subcontractors designated by CM and Owner, throughout all stages of the Work, based on approved Partnering Program. Publish and distribute meeting minutes to all attendees.

6.1.7 Permits, Licenses, Fees. CM shall confirm that all approvals, reviews, permits, licenses that are required for all portions of the construction of the Work to commence have been received

6.1.8 Submittal Schedule. CM shall update and coordinate all Submittal Schedules for Shop Drawings and Samples required by Division 1 and assure

submission of the Submittals in accordance with the Submittal Schedule.

6.1.9 List of Personnel and Subcontractors. Upon proposing the GMP Proposal for a Work Package, CM must submit an updated **Exhibit 3** which shall include a list of all subcontractors and consultants and their respective key personnel and salaried specialists and their respective duties for portions of the Work of the respective Work Package, which updated **Exhibit 3** will be substituted for the then existing **Exhibit 3.** The CM's personnel identified in **Exhibit 3** must not be changed without the Owner's prior written agreement, which will not be unreasonably withheld. The CM must notify Owner of any change to Subcontractors and consultants identified on **Exhibit 3**, as amended.

6.1.10 Construction Planning. To the extent that the Owner has agreed to permit the CM to submit a subsequent Construction Trades Package for a Work Package after the GMP Proposal for that Work Package has been submitted, CM shall prepare and submit such subsequent Construction Trade Package in accordance with the process set forth in Section 5.7.6 with an amended **Exhibit 3**.

6.2 Project Control.

6.2.1 Subcontracts. CM shall cause the Work to be constructed in strict accordance with the Contract Documents and within the applicable Contract Time Requirements of the Contract Documents, CM shall award and enter into and manage, as the general contractor, all Subcontracts necessary to provide all labor and materials for the Work.

6.2.2 Owner's Third Party Contracts. Owner reserves the right to perform any part or all of the Work and to award Third Party Contracts ("Third Party Contracts") to Owner's Third Party Contractors for Other Work.

6.2.3 Monitoring Progress. CM shall monitor the Work of the Subcontractors and other work of Owner's Third Party Contractors in conjunction with the Progress Schedule to ultimately achieve completion of the Work, as designed, at a cost not to exceed the applicable Contract Amount and GMP and within the applicable Contract Time Requirements. CM shall update the Labor Analysis, as needed.

6.3 Progress Schedule. CM must achieve sufficient progress in the Work to keep on schedule with the timelines and Milestones set out in the Project Schedule in order to ultimately achieve the applicable Contract Time Requirements for the Project and each Work Package. Updating the Progress Schedule in a timely manner and comparing it to the Project Schedule will be a continuing priority for CM during the entire Project.

6.3.1 CM shall use Oracle Primavera or such other scheduling program approved by Owner and provide Owner with a copy of the program for its use in connection with the administration of this Project, and shall update the Progress Schedule as reasonably required by Owner, but not more often than weekly nor less often than monthly, immediately prior to each then current Application for Payment.

6.3.2 Proposed adjustments to the Progress Schedule that do not change the applicable Contract Time Requirements, including applicable Milestones, and which generally conform to the then current Project Schedule and applicable provisions of Division 1 will be approved by Owner's Representative in its reasonable discretion.

6.4 Budget and Cost Control.

6.4.1 Administration. CM shall prepare, administer, and provide to Owner, Subcontractors' Schedule of Values, Subcontractors' sworn statements and waivers of liens, as required, Contract and disbursement summaries, Change Order Logs and Change Orders, and budget cost summary reports, as required by Owner.

6.4.2 Procurement and Estimates. CM shall prepare and update all procurement and construction cost estimates. CM shall continue updating the Cost Management Report, with additional detail as may be required by the Owner and/or A/E, monthly prior to submitting the next Application for Payment. Further, the Cost Management Report shall track and compare Construction Cost Limitation amounts and GMP with the actual costs of the Work. Also, throughout the duration of the Work, continue providing cost consultation services.

6.4.4 Report Cost Variances. CM shall promptly, but in any event, no more than seven Calendar Days after acquiring such information, identify all variances between estimated costs and actual costs, and shall promptly report such variances to the Project Team along with recommendations for action.

6.4.5 Schedule of Values. CM shall continue updating the CM's Schedule of Values monthly prior to submitting the next Application for Payment.

6.4.6 Advice. CM shall advise the other members of the Project Team immediately, if at any time, the CM has knowledge or belief that the Contract Amount or Project Schedule will not be met, and make recommendations to the Project Team for corrective action.

6.4.7 Cost Control System. CM shall develop and monitor an effective system of Project cost control, which system shall be disclosed to and reviewed and approved by Owner and Owner's Representative. In connection with the management of the Cost Control System, CM shall develop cash flow reports and forecasts as reasonably requested or required by Owner or Owner's Representative.

6.5 Recovery Schedule. If the Progress Schedule indicates that the Work cannot be achieved within the applicable Contract Time Requirements or the Owner otherwise determines that CM is not on schedule to achieve the applicable Contract Time Requirements, Owner will notify CM in writing.

6.5.1 CM will have seven Calendar Days after receipt of such notice to either (a) disagree with Owner and provide documentation, using the cost and resource loaded critical path methodology, of how CM is actually on schedule to achieve the Contract Time Requirements for the Project and each applicable Work Package or (b) provide Owner and A/E a Recovery Schedule, which identifies specific measures that CM will undertake to get the Project back on schedule to achieve the Contract Time Requirements for the Project and each applicable Work Package, and which must remain in effect until the progress of the Work is back on schedule to achieve the applicable Contract Time Requirements for the Project and each applicable Work Package.

6.5.2 A "Recovery Schedule" means a short duration schedule implemented to bring the Project back on schedule to achieve the Contract Time Requirements for the Project and each applicable Work Package. The Recovery Schedule may include any of the following items, or other similar measures.

6.5.2.1 An increase in working forces;

6.5.2.2 An increase in equipment or tools;

6.5.2.3 An increase in hours of Work or number of shifts; or

6.5.2.4 Expedited delivery of material.

6.5.3 CM is not entitled to an increase in Contract Amount for any additional temporary effort necessary under the Recovery Schedule.

6.6 LEED. CM shall continue implementation of LEED management plan and updating tracking methodology acceptable to Owner. CM shall provide documentation as required by Division 1 and the technical Specifications and assist A/E in applying for and successfully attaining a Silver, or higher, LEED rating for the Project.

6.7 Construction Planning. Without limiting CM's obligations to continue to perform necessary Preconstruction Phase Services after commencement of the Construction Phase for each respective Work Package, CM shall perform the following services in connection with the Construction Phase Work.

6.7.1 Long Lead Items. CM shall coordinate and expedite the procurement by both CM and, as applicable, Owner of Long Lead Items to ensure their procurement, delivery, and installation by the Milestone dates provided on the Progress Schedule.

6.7.2 Assistance. If requested and approved by Owner, CM shall participate with A/E in preparing performance specifications and requests for technical proposals for the procurement and installation of systems, components.

6.7.3 Issue Requests. If requested and approved by Owner, CM shall issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

6.7.4 Bids, Competitive Sealed Proposals and Conferences. When Bids, Competitive Sealed Proposals and Pre-Bid or Pre-proposal Conferences are required, CM shall follow the methodology set out in Section 5.7, Construction Planning.

6.7.5 M/WBE Procurement Program. CM shall continue to comply with and implement and monitor the M/WBE Procurement Program for the Project. Meet Project M/WBE goals and/or make a good faith effort to do so, and complete the Compliance Plan.

6.7.6 Quality Control Plan. CM shall continuously implement and monitor the quality control Work plan to assure requirements of the Contract Documents are met with a minimum of remedial work. CM shall schedule and coordinate all needed tests with Owner, Owner's Third Party Contractors, consultants and any applicable testing agencies, and notify Owner and A/E of the day and time of any test, without assuming direct responsibility for the work of Owner's Third Party Contractors and any testing agencies. *See* Section 13.3 of General Conditions**.**

6.7.7 Temporary Site Facilities. CM shall maintain adequate temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all Project Site facilities necessary for CM to manage, inspect, and supervise the Work. Further, CM shall provide Owner's Third Party Contractors: access to the Site; access to the sanitary facilities; access to temporary water and power on Site; access to the Site for minor storage. CM is not required to provide storage containers or large storage space, office trailers, dumpsters for recycling, nor hauling services for Owner's Third Party Contractors or Consultants, unless CM and Owner otherwise agree.

6.7.8 Safety Plans; OCIP. CM shall maintain and supervise all safety precautions in coordination with the CM's safety plan and program and, as applicable, the Owner's insurance programs (including the OCIP) in connection with the Work.

6.7.9 Labor Analysis. CM shall update the Labor Analysis as needed and make any appropriate recommendations for actions that will minimize adverse effects of labor

shortages on the Progress Schedule.

6.8 Owner's Third Party Contracts. As applicable, CM shall continue to coordinate the Owner's purchase, delivery, and installation of any Owner Supplied Equipment, materials, or other such items as may be required to achieve applicable Milestones on the Project Schedule and the Progress Schedule for complete installation prior to Substantial Completion and, as applicable, the LEED's off-gassing Milestone.

ARTICLE 7. CONTRACT AMOUNT

7.1 Contract Amount. Owner shall pay CM, in accordance with Article 14 of the General Conditions of Contract, the Contract Amount equal to:

(i) the CM's Preconstruction Phase Services Fee and Preconstruction Phase reimbursables as provided in Section 7.2.1 below,

(ii) the CM's Fee for Construction Phase Services as provided in Section 7.2.2 below, and

(iii) the Cost of the Work as provided in Section 7.3 below, subject to the GMP established in Section 7.4 below and any adjustments made in accordance with the Contract Documents.

The applicable Contract Amount and its component elements for each Work Package shall be subject to the GMP for that Work Package.

7.2 CM's Preconstruction and Construction Phase Fees

7.2.1 CM's Preconstruction Phase Fee. For the Preconstruction Phase Services performed prior to the commencement of the Construction Phase, the Owner shall pay the CM the stipulated sum of _____ Dollars ($_____). This amount is predicated on the progress of the design being adequate to allow the CM to present a GMP Proposal for the initial Work Package as outlined in the Project Schedule attached to this Agreement no later than (9) months after the commencement of the Preconstruction Services Phase and shall be equitably adjusted if the progress of the design is not adequate to allow such a Proposal by that date. Except as otherwise expressly provided herein, all personnel costs, including insurance and benefits in connection with the performance of the Preconstruction Phase Services, as well as the CM's overhead and profit for such Services, shall be included in the CM's Preconstruction Phase Fee.

7.2.1.1 CM shall also be entitled to reimbursement of those actual costs and expenses reasonably and necessarily incurred in the performance of the Preconstruction Phase Services. To the extent that the Contract Documents include a schedule for reimbursement of certain travel costs, reimbursement for such costs shall be made pursuant to such schedule and in lieu of reimbursement of actual costs of travel. Such costs and expenses shall be limited to reasonable and necessary travel and lodging expenses for CM personnel not stationed at Owner's and A/E's offices and when traveling to Austin for the performance of Preconstruction Phase Services and such reasonable and necessary costs for offices at or near the Site and supplies required by CM in connection with the performance of the Preconstruction Phase Services (referred to collectively as the "Preconstruction Phase Reimbursables"). Notwithstanding the foregoing, CM shall not be entitled to reimbursement of costs for offices and supplies after the commencement of the initial Work Package of the Construction Phase. The

Preconstruction Phase Reimbursables shall not exceed the sum of zero Dollars ($0). If the CM is entitled to an equitable adjustment in the Preconstruction Phase Fee as provided in Section 7.2.1 above, the Preconstruction Phase Reimbursables may also be equitably adjusted to reflect the additional actual costs and expenses reasonably and necessarily incurred by the CM.

7.2.1.2 The Preconstruction Phase Fee shall be payable in (_____) equal monthly installments. The Preconstruction Phase Reimbursables shall be paid monthly following presentation of the CM's invoice, with such supporting documentation as Owner may reasonably require or as otherwise required by the Contract Documents. Payments are due and payable forty (40) days after the date the Owner receives the CM's invoice, with such supporting documents as required herein.

7.2.1.3 It is acknowledged and agreed that, even after the commencement of the Construction Phase of the initial Work Package, the CM shall continue to be obligated to perform Preconstruction Phase Services relative to that Work Package and the rest of the entire Work. However, all fees, costs, and expenses in connection with such Preconstruction Phase Services performed after the commencement of the Construction Phase of the initial Work Package, including Preconstruction Phase Reimbursables, shall be reimbursable only to the extent such fees, costs, and expenses are reimbursable as Cost of the Work, subject to the GMP as established in the initial Work Authorization Amendment (or such subsequent Work Authorization Amendments).

7.2.2 CM's Construction Phase Fee. No adjustment in the CM fee percentage will be authorized for any cause or reason in the performance of all work under this agreement, including Change Orders resulting from increases in the Scope of the Work, which may be requested by the Owner from time to time.

7.3 Cost of the Work.

7.3.1 Included Costs. The Cost of the Work shall include only the following:

7.3.1.1 Wages or salaries of employees of CM actually performing minor portions of the Work as permitted by law and the Contract Documents or, with Owner's agreement, at locations off the Site.

7.3.1.2 Wages or salaries of CM's supervisory and administrative personnel approved by the Owner or otherwise authorized under the Contract Documents when stationed at the site and working full time on the Project or working off-site to assist in the production or transportation of material and equipment necessary for the Work in accordance with the **CM's Supervisory and Administrative Personnel Cost Schedule** attached hereto as **Exhibit 4**.

7.3.1.3 Costs incurred by CM for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by CM, but only to the extent such costs are based on wages and salaries paid to employees of CM covered under Subsections 7.3.1.1 through 7.3.1.2 above. Notwithstanding the foregoing, the costs under this Subsection 7.3.1.3 are included within the rates for the employees as set forth in **Exhibit 4**.

7.3.1.4 With prior written approval of the Owner, eligible expenses for reasonable transportation and living expenses in connection with out-of-town travel by

CM's supervisory and administrative Project personnel described above, which shall be reimbursable on the basis of a schedule of reimbursable costs to the extent that the Contract Documents include such a schedule for reimbursement of travel costs. Such expenses incurred by other employees of the CM not permanently stationed at the field office must be approved in advance by the Owner. Commuting expenses are specifically not reimbursable.

7.3.1.5 Payments properly made by CM to Subcontractors and consultants for performance of portions of the Work and to the CM for self-performed Work as authorized by the Contract Documents and agreed by the Owner. To the extent that Owner has authorized the CM to enter into a subcontract whose compensation is based upon the cost of the work plus a fee, the cost of the work under such subcontract shall incorporate the same definition of the Cost of the Work as set forth in this Agreement.

7.3.1.6 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment, and supplies incorporated or reasonably used in completing the Work.

7.3.1.7 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, that are not fully consumed in the performance of the Work and that remain the property of CM, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by CM at the site, whether rented from CM or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rental charges for CM- owned equipment shall be eighty-five percent (85%) of those listed in the most current edition of the Rental Blue Book for Construction Equipment published by the Equipment Guidebook Company. CM shall provide monthly an inventory of all rented or purchased equipment and small tools greater than $500.00 committed to the Project. Such inventory shall be in form acceptable to Owner's Representative. CM shall support its rental charges for such tools and equipment based upon actual usage and in a manner reasonably acceptable to Owner's Representative. Owner will receive from CM the reasonable value, in cash or a credit against the Cost of the Work, of all such materials, equipment, temporary structures, tools and supplies when they are no longer required for the Work and are sold for salvage value at Owner's direction. However, Owner reserves the right to keep any of such materials, equipment, temporary structures, tools or supplies rather than receive cash or credit for them.

7.3.1.8 Costs of removal of debris and waste from the Site. All subcontracts shall require Subcontractors to remove regularly all debris created by their activities to a dumpster provided by CM and CM shall enforce such requirements or effect an appropriate back charge to those Subcontractors who fail to meet their requirements in this regard.

7.3.1.9 All fuel costs incurred by CM in the performance of portions of the Work self-performed by CM and not otherwise included in General Conditions.

7.3.1.10 Reproduction costs, costs of telegrams, facsimile transmissions and long- distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

7.3.1.11 Costs for permits, royalties, licenses, tests and inspections and reasonable attorney's fees incurred by CM as a requirement of the Contract Documents, provided that any such attorney's fees are incurred in enforcing this Agreement on behalf of the Owner and Owner has been notified of the need to obtain such legal services and the Owner has been afforded the opportunity to provide its own legal services.

7.3.1.12 That portion directly attributable to this Contract of premiums for insurance and bonds that are required by the Contract Documents or otherwise agreed to by the Owner.

7.3.1.13 Reasonable Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property provided such costs do not arise from the negligence of CM or those working by and through CM.

7.3.1.14 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner prior to incurring these costs, which approval will not be unreasonably withheld or delayed.

7.3.2 CM's General Conditions Costs. The Owner and CM have hereby agreed that those certain administrative and supervisory personnel costs, direct overhead, and other onsite costs and expenses incurred by Contractor in the performance of its administrative, supervisory, and management responsibilities under the Contract otherwise reimbursable under Section 7.3.1 above and described or itemized in **CM's General Conditions Costs Schedule** attached hereto as **Exhibit 5** shall, notwithstanding the other terms of this Article 7, be reimbursable to the Contractor subject to the limitations and restrictions expressly set forth in Subsections 7.3.2.1 and 7.3.2.2 below.

7.3.2.1 Those reimbursable costs described or itemized in **Exhibit 5** (the "CM's General Conditions Costs") shall be separately and clearly identified in each Application for Payment submitted by CM. The total aggregate amount of the CM's General Conditions Costs reimbursable to the CM, notwithstanding the actual costs incurred by the CM, shall not exceed_____Dollars ($_____) for the entire Work, subject to such adjustments as may be expressly authorized by the Contract Documents.

7.3.2.2 In the event that the Construction Phase is divided into two or more Work Packages, the aggregate cap on the amount of the CM's General Conditions Costs reimbursable for a respective Work Package shall be set out in the GMP Proposal for that Work Package and shall be allocated to such Work Package in an amount which bears the same ratio to the aggregate cap on the CM's General Conditions Costs set forth in Subsection 7.3.2.1 above as the estimated Cost of the Work of that Work Package (as reflected in the GMP Proposal) bears to a reasonable estimate of the Cost of the Work of the entire Project.

7.3.3 Excluded Costs

The following costs are excluded from the Contract Amount to be paid by Owner:

7.3.3.1 Legal and administrative costs to review and negotiate these Contract Documents.

7.3.3.2 Travel and subsistence expense of CM, its officers or employees incurred while traveling between the Site and CM's principal or branch offices in Austin,

and other travel in the Austin metropolitan area not authorized under Section 7.3.1.4.

7.3.3.3 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of CM.

7.3.3.4 Costs incurred by CM resulting from the failure of CM or its Subcontractors to coordinate their work with that of Owner and Owner's Third Party Contractors, if any, after providing the Progress Schedule, or failure of CM to comply with directives of Owner not in conflict with the Progress Schedule.

7.3.3.5 Costs resulting from the failure of CM or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

7.3.3.6 Any and all overhead expense, or office expense at any location, except as related to CM's Project Site office expense to the extent included in the General Conditions.

7.3.3.7 Costs related to CM's indemnification obligations arising under the Contract Documents.

7.3.3.8 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.

7.3.3.9 Any cost arising out of the fault or negligence of CM, its Subcontractors or consultants, or any person or entity for whom they may be liable, including, without limitation, costs related to defective Work, materials or equipment, and damage to persons or property.

7.3.3.10 Liquidated or actual damages imposed by Owner for failure of CM to complete the Work on or before the Substantial Completion Date.

7.3.3.11 Any sales, use or similar taxes, tariffs or duties incurred in the performance of the Work. The parties hereto acknowledge that Owner is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas. Owner shall provide CM with a Sales Tax Exemption Certificate in order to provide for the tax-free purchase and procurement of services and materials for the Project.

7.3.3.12 Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the applicable GMP to be exceeded or, in the case of the CM's General Conditions Costs, that would cause the respective aggregate cap to be exceeded, or in the case of the Preconstruction Phase Reimbursables, that would cause the respective limit of such reimbursement to be exceeded.

7.3.3.13 The cost of non-statutory subcontractor bonds or subcontractor default insurance.

7.4 Guaranteed Maximum Price. The sum of the (i) the CM's Preconstruction Phase Fee and Preconstruction Phase Reimbursables, (ii) the CM's Fee for Construction Phase Services, and (iii) the Cost of the Work shall not exceed the Guaranteed Maximum Price ("GMP") as established or to be established hereunder, subject to such adjustments as may be expressly authorized by the Contract Documents. Once the applicable GMP has been established in accordance with the Contract Documents, all costs which would cause the GMP to be exceeded shall be paid by the CM without reimbursement by the Owner.

7.4.1 GMP Proposals. Based upon the information, analysis, findings, and reports developed during the Preconstruction Phase, at 50% completion of design completion of the Construction Documents unless otherwise agreed by Owner, the CM shall submit its GMP Proposals ("GMP Proposals") on a Request for Proposal form as required herein, and supplemented as necessary, as follows:

7.4.1.1 Initial Guaranteed Maximum Price Proposal. Within sixty (60) days after the CM is furnished the Construction Documents at Design Development Phase of the entire Work or a Work Package by the A/E and with the Owner's approval thereof, the CM shall submit its Initial Guaranteed Maximum Price Proposal ("IGMP Proposal") for the entire Work or the Work Package, respectively, in such form and with such backup documentation as required for the GMP Proposal. Except as may otherwise be agreed by the Owner and the CM, the IGMP Proposal shall include a Construction Contingency of five percent (5%) of the estimated Cost of the Work. If the IGMP Proposal is accepted by the Owner, the estimated Cost of the Work component of the IGMP for the Work covered by such Proposal (including the Construction Contingency) shall constitute a fixed limit of the Cost of the Work covered by the Proposal (the "Construction Costs Fixed Limit").

7.4.1.2 GMP Proposal for the Work or a Work Package. Within sixty (60) days after the Construction Documents have been sufficiently developed with respect to the Work or a specific Work Package so that they contain sufficient detail as mutually agreed to, in good faith, by Owner and CM to establish a final, binding GMP for the specified scope of the Work, the CM shall submit its GMP Proposal for the entire Work or the Work Package, respectively, in such form and with such backup documentation as required herein for the GMP Proposal. Except as may otherwise be agreed by the Owner and the CM, the GMP Proposal shall include a Construction Contingency of two percent (5%) of the estimated Cost of the Work.

Notwithstanding the foregoing, the estimated Cost of the Work component of the CM's GMP Proposal (inclusive of the Construction Contingency) shall not exceed the Construction Costs Fixed Limit from the IGMP accepted by the Owner for such Work, except to the extent that CM can establish that such increases were the result of changes in the scope of the Work from the pricing for the IGMP and for which the CM would otherwise be entitled to an increase in the Contract Amount under the Contract Documents if such change occurred after the GMP was established.

7.4.2 GMP Proposal Requirements. The GMP Proposal shall be consistent with the **Guidelines to Prepare the GMP Proposal** attached hereto as **Exhibit 6** and shall include the following, unless the Parties mutually agree otherwise:

7.4.2.1 A proposed GMP for the designated portion of the Work, which shall be the sum of:

- **i.** Stipulated Sum for Preconstruction Phase Services established under Section 7.2.1 above and the Preconstruction Phase Reimbursables subject to Section 7.1.2.2 above for the designated portion of the Work;
- **ii.** the CM's Fee for the designated portion of the Work as defined in Section 7.2.2 above; and
- **iii.** the estimated Cost of the Work, including the CM's General

Conditions Costs, as defined in Section 7.3 above, inclusive of any Construction Contingency, if such a Contingency is established in the accepted GMP Proposal, for the designated portion of the Work.

7.4.2.2 A list of the Construction Documents, including all other information used as the basis for the GMP proposal;

7.4.2.3 A list of the assumptions and clarifications made by CM in the preparation of the GMP Proposal, which list is intended to supplement the information regarding the scoping and requirements of the Work contained in the Construction Documents;

7.4.2.4 If applicable, a list of Allowances or any other open pricing terms and a statement of their basis;

7.4.2.5 If applicable, a schedule of Unit Prices;

7.4.2.6 The Contract Time Requirements for the designated portion of the Work, including the Milestone dates and the required Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established hereunder,

7.4.2.7 A Schedule of Values based upon the Contract Time Requirements;

7.4.2.8 Any other information requested in the attached form of the GMP Proposal.

The GMP Proposal must be prepared with a breakdown of estimated costs organized by trade, allowances, contingencies, etc. following the format presented in **Exhibit 6.** The GMP Proposal must include a description of how the estimated Cost of the Work was derived and prepared in accordance with the requirements of this Agreement and the other Contract Documents. If directed by Owner, in formulating the estimated Cost of the Work in the GMP Proposal, CM shall provide for a construction contingency ("Construction Contingency") as provided in Section 7.4.5 below.

7.4.3 Negotiation of IGMP and GMP Proposals. After submission of each of the IGMP and the GMP Proposals for the entire Work or any Work Package, CM and Project Team shall promptly meet to discuss and review the respective Proposals. To the extent that the estimated Cost of the Work component of a GMP Proposal exceeds the Construction Costs Fixed Limit established in an agreed IGMP, the CM shall exercise best efforts (as measured by its applicable standard of care under the Contract) to propose Value Engineering solutions and other cost-cutting measures to bring such construction costs within the applicable Limit. In the event that the estimated Cost of the Work component exceeds the applicable Construction Costs Fixed Limit and such cost increase is not due to a change in the scope of the Work, CM shall not be entitled to any reimbursement for the time or expenses required to bring such construction costs within the applicable Limit. If Owner has any comments regarding the respective Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to CM of such comments or findings. If appropriate, CM shall, upon receipt of Owner's notice, make appropriate adjustments to the respective Proposal. If Owner accepts a GMP Proposal, as may be amended by Owner and CM, the Proposal and its basis shall be set forth in a Work Authorization Amendment to this Agreement. Notice to Proceed on a Work Authorization Amendment may be issued

immediately upon full approval and execution and receipt of all required bonds and insurance. The Notice to Proceed on a Work Authorization Amendment may be phased in two or more phases, if approved by Owner, with each phase being issued its own Notice to Proceed. CM agrees that to the best of its knowledge that the Contract Documents at the time of the execution of the respective Work Authorization Amendment are sufficient to enable it to determine the GMP for all the Work covered by such Amendment and that such Work can be completed in accordance with the Contract Documents for the GMP. By agreeing to a GMP, CM agrees with Owner that the Work required by the Contract Documents for the Work covered by the respective Work Authorization Amendment, including, without limitation, construction means, methods, procedures, and techniques necessary to perform the Work, will be consistent with (i) good and sound practices within the construction industry; (ii) generally prevailing and accepted industry standards applicable to the Work, and (iii) requirements of any warranties applicable to the Work.

7.4.4 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal for the entire Work or any Work Package (which it may do in its sole discretion), or fails to notify CM in writing within thirty (30) calendar days of receipt of the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and CM shall meet and confer as to how the Project will proceed, with Owner having the following options, the selection of which option Owner may make in its sole discretion:

7.4.4.1 Owner may suggest modifications to the GMP Proposal and consider CM's additional VEP and other suggestions for cost reduction, whereupon if such modifications are accepted in writing by the Owner and CM, the GMP Proposal shall proceed in accordance with Section 7.4.3 above;

7.4.4.2 Owner may authorize and direct, in writing, the CM to proceed with the specified Work on the basis of reimbursement as provided in Sections 7.2 (CM Fee) and 7.3 (Cost of Work) hereof without a GMP, in which case all references in this Agreement to the GMP will not be applicable; or

7.4.4.3 Owner may terminate this Agreement or the portion thereof relating to the Work Package for convenience in accordance with the Contract Documents; provided, in such event, CM will be entitled to the payment as provided in the Contract Documents for termination for convenience.

7.4.5 Construction Contingencies. Each IGMP and GMP for the Work or any Work Package shall include a Construction Contingency in the amount as expressly authorized in this Agreement. Such Construction Contingency shall be shown in the respective Schedule of Values and clearly identified as the "Construction Contingency". The Construction Contingency shall not be allocated to any particular item of the Cost of the Work and is established for increases in Cost of the Work incurred by the CM for unforeseen causes or details not capable of reasonable anticipation at the time of the execution of this Agreement or the respective Work Authorization Amendment and is not intended for changes in the scope of the Work or for reimbursement of expenses and costs not otherwise recoverable as Cost of the Work under Article 7 of this Agreement. It is understood that the amount of any such Construction Contingency, except as otherwise provided in this Agreement, is the maximum sum available to the CM to cover cost incurred as a result of such unforeseeable causes or details and that cost overruns in excess of the amount of the Construction Contingency will be borne by the CM. The CM will not be allowed to use any part of the Construction Contingency without prior written approval from the Owner, such approval not to be unreasonably withheld.

7.4.6 Allowances. "'Allowance' is defined as "a not-to-be-exceeded amount", either individually or in the aggregate, which is established between the OWNER and the CM as part of a GMP Proposal when the precise scope of a particular line item(s) has not been defined to a level which is adequate for the CM to provide a definitive line item pricing for that particular scope of Work. The use of any Allowances by the CM in any GMP Proposal will be subject to the OWNER's sole approval and it is the OWNER's intent to minimize the use of Allowances to the fullest extent possible. For any Allowances which the OWNER allows the CM to use, the following rules shall apply: (i) Allowances shall cover the cost to the CM of the Cost of Work, as defined in the Agreement; (ii) CM's portion of the Fee for overhead and profit associated with the stated Allowance shall be included in the GMP Proposal; and (iii) upon completion of the portion of the Work subject to an Allowance, the Contract Amount for that portion of the Work will be adjusted based upon the approved actual Cost of the Work, including the proportionate fee, which will not exceed the approved aggregate amount of the Allowances.

7.4.7 Adjustments to GMP and Schedule. Once an IGMP or GMP has been agreed upon and incorporated into the Contract, such GMP is subject to adjustments only as provided in the Contract Documents, including Article 11 of the General Conditions. The Contract Time Requirements applicable to the entire Work or a Work Package is subject to adjustments only as provided in the Contract Documents, including Articles 10 -- 12 of the General Conditions.

ARTICLE 8. PROCEDURE FOR PAYMENT

8.1 Progress Payments

8.1.1 CM shall submit applications for Progress Payments to Owner no more than once a month and in accordance with the Contract Documents, unless the Project is designated by Owner as a "Super Prompt Payment" Project, in which case, the Application for Payment and the payment process will be governed by the Owner's Super Prompt Payment process set forth in the General Conditions.

8.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 14 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under the Contract Documents.

8.1.3 The CM's Fee shall be paid as provided in Section 7.2.2 above.

8.1.4 In addition to any provisions which must be also included in the CM's subcontracts under other requirements of the Contract Documents, the subcontracts must specifically provide that the submittals of Applications for Payment by the Subcontractors to the CM will constitute a release of any and all claims for the amount of any previous payments and for the amount of the payment requested to the extent of the subsequent payment.

8.2 Retainage on Progress Payments

8.2.1 Owner will retain five percent (5%) of each Application for Payment until final payment, except as otherwise expressly provided in this Section 8.2.

8.2.2 Notwithstanding the foregoing, retainage will not be withheld from payments to the CM for its Preconstruction Phase Fee, Preconstruction Phase Reimbursables, or the CM's General Conditions Costs. Additionally, with Owner's consent, such consent not to be unreasonably withheld, retainage shall not be withheld from payments to the CM with regard to payments for direct purchases of materials, appliances, and equipment by the CM when such retainage is not commercially feasible.

8.2.3 The parties may agree to the early release of retainage for selected Subcontractors upon the satisfactory completion and acceptance of the Work of the respective Subcontractor, or at such other time as agreed by the Owner and the CM.

8.2.4 Any reduction or release of retainage, or portion thereof, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the CM or (2) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

8.2.5 Retainage under Subcontracts shall be included in CM's Application and Certificate for Payment for the purpose of indicating the value of the Work performed; however, CM shall not request payment thereof from Owner until such retainage is actually paid or payable.

8.2.6 Such retained amounts shall not be due and payable to CM until Substantial Completion of the entire Work as certified by the A/E, at which time Owner shall pay all retainage to CM, withholding only 150% of the reasonably estimated cost to complete all remaining Work, to fulfill CM's remaining obligations under the Contract, and to cover any outstanding, unpaid claims.

8.3 Payments to Subcontractors From CM. CM shall pay each Subcontractor an amount equal to the percentage of completion allowed to CM on account of the work of such Subcontractor, less the percentage retained from payments to CM and any other amounts properly withheld by CM. CM shall also require each Subcontractor to make similar payments to its sub-subcontractors.

8.4 Final Payment. CM shall submit its Final Application for Payment to Owner in accordance with the General Conditions of Contract. Owner shall make payment on CM's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that CM has satisfied all of the requirements for Final Payment.

8.5 Interest. Payments due and unpaid by Owner to CM, whether progress payments or final payment, shall bear interest commencing thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment is due at the rate established in the General Conditions of Contract, which will fully liquidate any injury to CM growing out of any such delay in payment.

8.6 Record Keeping and Financial Controls. CM acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work and all other amounts included in the Contract Price. CM shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final

Payment, Owner and Owner's accountants and other designees shall be afforded reasonable access from time to time, to audit in accordance with the General Conditions of the Contract.

8.7 Payments for Professional Services. The CM will be compensated for PreconstructionPhase Services as provided in Section 7.2.1.2 above.

ARTICLE 9. INSURANCE AND BONDS

9.1 Insurance. CM shall procure, in accordance with Article 5 of the General Conditions of Contract and the Supplemental General Conditions, the following insurance coverage:

The specific insurance coverage requirements applicable to this Project as set forth in the Supplemental General Conditions, provided that there shall be no exclusions for the Construction Manager at Risk method described herein in any of the policies provided hereunder or any such exclusions shall be specifically deleted.

9.2 Bonds and Other Performance Security.

9.2.1 CM shall provide the following performance bond and labor and material payment bond or other performance security:

In lieu of providing bonds in the estimated cost of the entire Project prior to commencement of the Construction Phase, CM shall, in accordance with Section 271.118(l) of the Texas Local Government Code, provide a statutory performance bond and a statutory payment bond in the amount of the then current GMP for construction or the aggregate of the GMPs established in the then current Work Authorization Amendments.

9.2.2 CM shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to and waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material change required by the Surety. Owner may, in its sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

ARTICLE 10. REPRESENTATIVES OF THE PARTIES

10.1 Owner's Representatives

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 16.2.2 of the General Conditions of Contract:

Rebecca Campbell, Executive Director, (or designee)

10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 8.1 of the General Conditions of Contract: Identify individual's name, title, address and telephone numbers.

Rebecca Campbell, Executive Director
1901 E 51st St
Austin, TX 78723
(512) 322-0145

10.2 CM's Representatives

10.2.1 CM designates the individual listed below as its Senior Representative ("CM's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 16.2.2 of the General Conditions of Contract: Identify individual's name, title, address and telephone numbers.

_____ (Title)
_____
_____

10.2.2 CM designates the individual listed below as its CM's Representative, which individual has the authority and responsibility set forth in Section 6.1.2 of the General Conditions of Contract:

_____, Project Manager
_____
_____

ARTICLE 11. EXHIBIT

11.1 The following exhibits are incorporated by reference into this Agreement and the Contract Documents for all purposes as if fully set forth:

Exhibit 1	Site Plan
Exhibit 2	Project Schedule
Exhibit 3	List of Key Staff/Personnel
Exhibit 4	CM's Supervisory and Administrative Personnel Cost Schedule
Exhibit 5	CM's General Conditions Costs Schedule
Exhibit 6	Guidelines to Prepare the GMP Proposal

In executing this Agreement, Owner and Construction Manager at Risk each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

Executed in multiple counterparts, to be effective as of the later date set forth below.

Construction Manager-at-Risk

_____,
(entity status as applicable - e.g., Inc., a Texas corporation)

By:_____

Name:_____

Title: _____, Authorized Representative

Date: _____, 20__

Owner
Austin Film Society

By:_____

Name:_____

Title: _____, Authorized Representative

Date: _____, 20__

Exhibit 1
Site Plan / Location Map

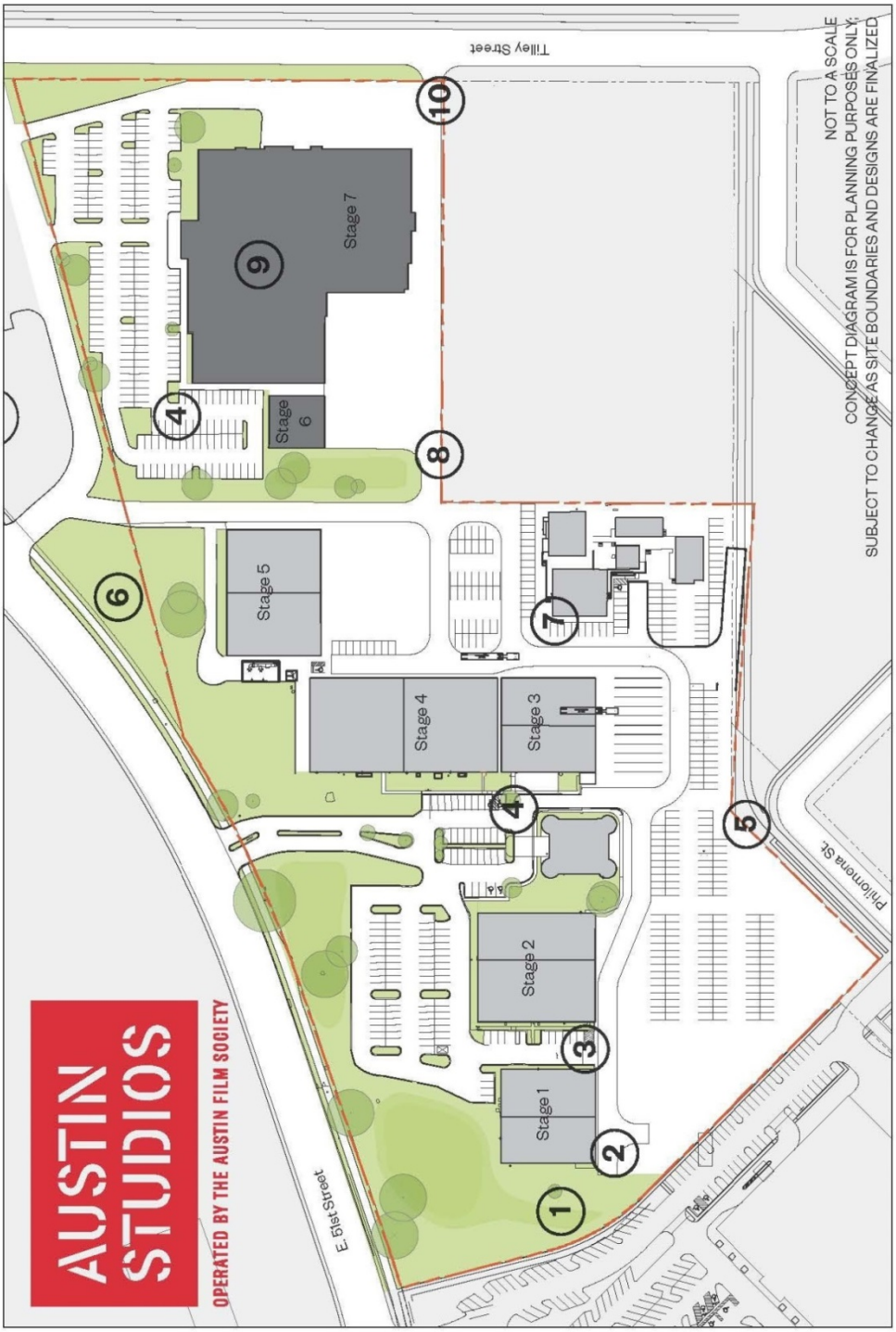


Exhibit 2
Project Schedule

CONCEPT SCHEDULE, OWNER WILL SEEK INPUT FROM CMR ON SCHEDULING

Design & Pre-Con (12 months)	**June 2015 to May 2016**
Construction (8 months)	**June 2016 to February 2017**
TI Finish Out (NIC) (4 months)	**March 2017 to July 2017**

Exhibit 3
List of Key Staff/Personnel

NAME	POSITION

Exhibit 4
CM's Supervisory and Administrative Personnel Cost Schedule

[See attached.]

POSITION	COMPENSATION – HOURLY*

*Except as otherwise expressly provide in this Exhibit 4, all rates or other methods of compensation quoted above are inclusive of all markups for benefits, insurance, and other employee costs for the identified position.

Exhibit 5
CM's General Conditions Costs Schedule

A. Included Costs. To the extent that the following items are reimbursable as Cost of the Work under Section 7.3 of the Agreement, the costs of such items shall be reimbursable as the CM's General Conditions Costs and subject to such limitations as provided in Section 7.3.2 of the Agreement and in the General Conditions:

CM Employee Wages, Salaries, Benefits, and other Employee Costs

CM Supervisory and Administrative wages, salaries, benefits, and other employee costs as set forth and as limited by the CM's Supervisory and Administrative Personnel Cost Schedule attached as Exhibit 5 to the Agreement.

CM employee wages, salaries, benefits, and other employee costs for the performance of minor work under the Contract as allowed by the Owner and the Contract Documents

Travel and related expenses as recoverable under Section 7.3.1 of the Agreement, subject to such terms and limitations as provided in the General Conditions.

Bonds and Insurance

Builder's Risk Insurance
Performance Bonds
Professional Liability Insurance
General Liability Insurance Payment &
Other General Project Insurance

Temporary Amenities and Utilities

Dumpsters
Monthly Water Costs
Temporary Fire Protection
Fencing & Covered Walkways
Temporary Water Distribution & Meters
Temporary Electrical Distribution & Meters
Site Erosion Control & Project Entrance(s)
Temporary Toilets
Monthly Electrical Costs
Street Rental & Barricades
Monthly Telephone Installation Costs
Temporary Telephone System Installation
Coordination of Drawings

Field Offices & Construction Supplies

Partnering Costs
Job Photos/Videos
Reproduction Services
Project Specific Signage
Remote Parking Expenses
System/Watchman
Drinking Water & Accessories
Employee Identification System
Office Clean-Up/Janitorial Services
Monthly Office Trailer Rental Costs
Mobilization & Demobilization (Equipment Only)
Project Cleaning at Substantial Completion & Final Acceptance
First Aid Supplies
Reference Manuals
Monthly Office Supplies
Postage/Special Shipping
Project/As-Built Drawings Security
Move-In/Out & Office Setup
Safety Material and Equipment
Small Tools and Storage Trailers

B. Excluded Costs. Notwithstanding any provision in Section 7.3 of the Agreement, the following costs shall not be reimbursable as Cost of the Work or included in the CM's General Conditions Costs:

CM supervisory and administrative employee bonuses/incentives/rewards not included in the CM's Supervisory and Administrative Personnel Cost Schedule attached as **Exhibit 5** to the Agreement
The cost of non-statutory subcontractor bonds or subcontractor default insurance
Project staff mobilization costs
Purchase/Lease of vehicles and maintenance costs Construction association costs/dues/fees etc.
Purchase/Rental of radios/communication equipment
Purchase/Rental of jobsite computer and electronic equipment
Purchase/Rental of specialized telephone systems (including cellular/digital phones)

Exhibit 6
Guidelines to Prepare the GMP Proposal

The proposed Cost of the Work will be developed as specified in Article 7 of the Agreement and as set out herein.

The Stipulated Sum proposal must be submitted in a binder and entitled, "Proposal for the Cost of the Work for _____ Project, CIP I.D. _____ and must include a date on the cover. Proposal pages must be numbered. Proposals must include all specified items and components of the GMP as required by the Agreement, Sections must be divided by tabs for ease of reference. Please include:

- transmittal letter and table of contents

Tab 1 Executive Summary – brief general summary
Tab 2 A list of Drawings and Specifications and any other Contract Documents upon which the Competitive Sealed Proposals and/or bids were received.
Tab 3 Description of Variations, Substitutions proposed to the Drawings and Specifications:

- Specification listing – provide a detailed listing of Specifications by division and section, which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert "as per specifications"
- Assumptions and Clarifications– a narrative summary of all qualifications and assumptions included in the Specification listing
- Exclusions – a summary of all exclusions included in the Specification listing, plus any exclusions not related to the Specifications
- Value Engineering recommendations – if applicable
- Allowance Schedule – if applicable

Note: The Inclusion of any items that are either non-responsive or that conflict with or attempt to amend the substantive provisions of the Contract Documents will be rejected and the GMP Proposal may also be summarily rejected. This section should not be seen as an opportunity to attempt to amend the CM Agreement.

Tab 4 Cost of the Work Proposal Cost Breakdown:

- Estimated Cost of the Work shall be broken down into the standard 16 CSI Divisions and such sections as directed by the Owner prior to the submission of the GMP Proposal
- Cost breakdown will be a lump sum for each Division and section with information on proposed subcontractors and pricing supporting such costs.

Tab 5 Progress Schedule

- The Progress Schedule for the GMP Proposal must include detailed activities for all events and milestones included in Construction Phase.
- Additionally, the Progress Schedule update must include detailed, logic driven activities for all Construction Phase activities
- All paths in the Progress Schedule must lead to milestone activities to ultimately achieve Substantial Completion on or before the Milestone for Substantial Completion.
- The Progress Schedule must be provided in hard copy form in the binder and also in an electronic format attached to the binder.

Tab 6 M/WBE Plan

- Note: Identify all M/WBE Subcontractor participants being recommended. All M/WBE participation for Amendment No. 1 and any subsequent additional Construction Trade Packages will be included in the Compliance Plan and Final Compliance Plan.
- M/WBE Subcontractor Letters of Intent
- M/WBE Subcontractor Subcontracts

PERFORMANCE BOND

Section 00610

STATE OF TEXAS Bond No. _____

COUNTY OF _____ C.I.P. ID No. 7524.002

Project Name _____

Know All Men By These Presents: That _____ of the City of _____, County of _____, and State of _____, as Principal, and _____, a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto _____ (OWNER), in the penal sum of_____ _____ U.S. Dollars ($ _____U.S.) for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated the _____ day of _____, _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

In substantial compliance with the provisions of Chapter 2253 of the Texas Government Code, AFS shall require its general contractor, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Improvements, to furnish and deliver to the City, legally issued surety bonds in a form reasonably approved by the City, with the City and AFS named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Improvements and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties reasonably satisfactory to the City, no rights obtain thereunder to Contractor, no construction of the Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and AFS will be in material default under the Agreement.

Now, therefore, the condition of this obligation is such, that if said Principal shall faithfully perform said Agreement and shall in all respects duly and faithfully observe and perform all and singular covenants, conditions and agreements in and by said contract agreed and covenanted by Principal to be observed and performed, and according to true intent and meaning of said Agreement hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect. If OWNER notifies Principal and Surety the OWNER is considering declaring Principal in default, Surety agrees to meet with OWNER and Principal no later than fifteen days after receipt of such notice to discuss methods of performing the Work of the Contract.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with provisions of said Article to same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this _____day of _____, _____.

_____	_____
Principal	Surety
By_____	By_____
(Signature)	(Signature)
Title_____	Title_____
Address_____	Address_____
_____	_____
_____	_____
	Telephone_____Fax_____
	E-Mail Address _____

Name and address of Resident Agent of Surety:

_____

_____

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

PAYMENT BOND

Section 00620

STATE OF TEXAS Bond No. _____

COUNTY OF _____ C.I.P. ID No. 7524.002

Project Name _____

Know All Men By These Presents: That _____ of the City of _____, County of _____, and State of _____, as Principal, and _____, a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto _____ (OWNER), and all Subcontractors, workers, laborers, mechanics and suppliers as their interests may appear, all of whom shall have right to sue upon this bond in the penal sum of _____ U.S. Dollars ($ _____U.S.) for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated the _____ day of _____, _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

In substantial compliance with the provisions of Chapter 2253 of the Texas Government Code, AFS shall require its general contractor, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Improvements, to furnish and deliver to the City, legally issued surety bonds in a form reasonably approved by the City, with the City and AFS named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Improvements and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties reasonably satisfactory to the City, no rights obtain thereunder to Contractor, no construction of the Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and AFS will be in material default under the Agreement.

Now, therefore, condition of this obligation is such, that if the said Principal shall well and truly pay all Subcontractors, workers, laborers, mechanics, and suppliers, all monies to them owing by said Principals for subcontracts, work, labor, equipment, supplies and materials done and furnished for the construction of improvement of said Agreement, then this obligation shall be and become null and void; otherwise to remain in full force and effect.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with provisions of said Article to same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this _____day of _____, _____.

_____	_____
Principal	Surety
By_____	By_____
(Signature)	(Signature)
Title_____	Title_____
Address_____	Address_____
_____	_____
_____	_____
	Telephone_____Fax_____
	E-Mail Address _____

Name and address of Resident Agent of Surety:

_____

_____

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

CIP ID Number: 7524.002

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. (B) As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

(1) Not to engage in any discriminatory employment practice defined in this chapter.

(2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

(3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.

(4) To state in all solicitations or advertisements for employees placed by or on behalf of Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.

(5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.

(6) To cooperate fully with OWNER's Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of said Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.

(7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for expenditure of $2,000.00 or more in connection with any contract with OWNER subject to the terms of this chapter. .

For the purposes of this Bid and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination and Non-Retaliation Policy as set forth below.

City of Austin

Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non- retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code as set forth above and the City's Non-Retaliation Policy, as the Contractor's Non-Discrimination and Non-Retaliation Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIAITON POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICY, AS SET FORTH HEREIN, ***OR*** *THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL. (http://austintexas.gov/page/bid-docs).*

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 00630 Non-Discrimination and Non-Retaliation Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _____ day of _____, _____.

CONTRACTOR _____

Authorized Signature _____

Title _____

END

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contract for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its book, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

   (a) withholding of payments to the contractor under the contract until the contractor complies, and or
   (b) cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the

interests of the Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(DOT 1050.2, 08/24/71)

Contractor's full name and entity status:

_____

Signature, Authorized Representative of Contractor

_____

Title

_____

Date

END

CERTIFICATE OF INSURANCE

Section 00650

This Certificate shall be completed by a licensed insurance agent:

Name and Address of Agency:

_____

_____

Phone: _____ / _____

Name and Address of Insured:

_____

_____

_____

Phone: _____ / _____

Prime or Sub-Contractor: _____

Name of Prime Contractor, if different from Insured: _____

City of Austin Reference:

Project Name: Austin Studios Expansion

C.I.P. No.: 7524.002

Project Location: 1901 E 51st St, Austin, TX 78723

Managing Dept.: Economic Development Dept

Contract No.: _____

Project Mgr.: Margaret Shaw

Insurers Affording Coverages:

Insurer A: _____

Insurer B: _____

Insurer C: _____

Insurer D: _____

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS OF LIABILITY	
	Commercial General Liability Policy As defined in the Policy, does the Policy provide:				Each Occurrence	$
					General Aggregate	$
	☐ Yes ☐ No -- Completed Operations/Products				Completed Operations /Products Aggregate	$
	☐ Yes ☐ No -- Contractual Liability				Personal & Advertising Injury	$
	☐ Yes ☐ No -- Explosion				Deductible or Self Insured Retention	$
	☐ Yes ☐ No -- Collapse					
	☐ Yes ☐ No -- Underground					
	☐ Yes ☐ No -- Contractors/ Subcontractors Work					
	☐ Yes ☐ No -- Aggregate Limits per Project Form CG 2503					
	☐ Yes ☐ No -- Additional Insured Form – CG 2010					
	☐ Yes ☐ No -- 30 Day Notice of Cancellation Form – CG 0205					
	☐ Yes ☐ No -- Waiver of Subrogation Form – CG 2404					
	Pollution/ Environmental Impairment Policy				Occurrence	$
					Aggregate	$

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFE-CTIVE DATE (MM/DD/YYYY)	POLICY EXPIR-ATION DATE (MM/DD/YYYY)	LIMITS OF LIABILITY	
	Auto Liability Policy As defined in the Policy, does the Policy provide:				CSL	$
					Bodily Injury (Per Accident)	$
	☐ Yes ☐ No -- Any Auto				Bodily Injury (Per Person)	$
	☐ Yes ☐ No -- All Owned Autos				Property Damage (Per Accident)	$
	☐ Yes ☐ No -- Non-Owned Autos					
	☐ Yes ☐ No -- Hired Autos					
	☐ Yes ☐ No -- Waiver of Subrogation – CA0444					
	☐ Yes ☐ No -- 30 Day Notice of Cancellation – CA0244					
	☐ Yes ☐ No -- Additional Insured – CA2048					
	☐ Yes ☐ No -- MCS 90					
	Excess Liability ☐ Umbrella Form ☐ Excess Liability Follow Form				Occurrence	$
					Aggregate	$
	Workers Compensation and Employers Liability As defined in the Policy, does the Policy provide:				☐ Statutory	
					Each Accident	$
	☐ Yes ☐ No -- Waiver of Subrogation – WC420304				Disease – Policy Limit	$
	☐ Yes ☐ No -- 30 Day Notice of Cancellation – WC420601				Disease – Each Employee	$
	Is a Builders Risk or Installation Insurance Policy provided? ☐ Yes ☐ No					$
	☐ Yes ☐ No -- Is the City shown as loss payee/mortgagee?					
	Professional Liability As defined in the Policy, does the Policy provide:				Each Claim	$
	☐ Yes ☐ No -- 30 Day Notice of Cancellation Retroactive Date: _____				Deductible or Self Insured Retention	$

This form is for informational purposes only and certifies that policies of insurance listed above have been issued to insured named above and are in force at this time. Not withstanding any requirements, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, insurance afforded by policies described herein is subject to all terms, exclusions and conditions of such policies.

CERTIFICATE HOLDER:

Austin Film Society
1901 E 51st Street, Austin Texas 78723

DATE ISSUED: _____

_____
AUTHORIZED REPRESENTATIVE SIGNATURE

ADDITIONAL INSUREDS:

City of Austin, Economic Development Dept

PO Box 1088, Austin Texas 78767

Licensed Insurance Agent

TEXAS SALES AND USE TAX EXEMPTION CERTIFICATE

Section 00670

City of Austin, Texas
P.O. Box 1088
Austin, Texas 78767

CONTRACTOR/PURCHASER: _____

Street Address: _____

City, State, ZIP Code: _____

PROJECT: _____

Project Manager: _____

FDU No.: _____

CIP ID No._____

Description of items to be purchased or as described on the attached order or invoice:

_____

_____

The Contractor may purchase all labor, materials, supplies, and equipment to be incorporated in the City of Austin realty, including easements, or completely consumed at the Project jobsite and services required by or integral to the performance of the contract for the Project without paying sales or use tax in accordance with State Comptroller Rule 3.291.

Contractor/Purchaser claims this exemption for the following reason: This contract is to be performed for the City of Austin, a tax exempt entity under the Texas Tax Code.

I understand that I will be liable for payment of sales and use taxes which may become due for failure to comply with the provisions of the Tax Code. I also understand that it is a criminal offense to give an exemption certificate to the contractor for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate and depending on the amount of tax evaded, the offense may range from a Class B misdemeanor to a felony of the second degree.

City of Austin, Texas	Title	Date
Elaine Hart		
ELAINE HART	CHIEF FINANCIAL OFFICER	March 20, 2014

CONTRACTOR/PURCHASER: _____

By: _____

Title: _____

Date: _____

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle. THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID. Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist. This certificate should be furnished to the supplier. Do not send the completed certificate to the Comptroller of Public Accounts.

End

NON-USE OF ASBESTOS AFFIDAVIT (CONTRACTOR PRIOR TO CONSTRUCTION)

Section 00680

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared the Affiant who, being by me first duly sworn, upon oath deposed and stated:

"My name is _____, hereinafter known as Affiant.

"I am over the age of 18 years and I have never been convicted of a crime. I am the _____ of _____ hereinafter known as CONTRACTOR.

"I am fully competent to make this affidavit. I have personal knowledge of the facts set forth below and they are all true and correct.

"WHEREAS CONTRACTOR has submitted a bid to the City of Austin as the Prime CONTRACTOR and anticipates being awarded a contract for the construction of _____ _____, located at _____, Austin, Texas, hereinafter known as Project, for the City of Austin, Texas, hereinafter known as OWNER, and

"WHEREAS asbestos in a dust form is a recognized health hazard, and

"WHEREAS the OWNER desires not to have any asbestos containing materials used or incorporated into the construction of the Project;

"THEREFORE the CONTRACTOR affirms and understands the following:

1. The CONTRACTOR, any person, firm or organization representing or represented by the CONTRACTOR, or employed by the CONTRACTOR shall not cause or allow any material to be incorporated into the construction of the project, or allow any building material on the project site that is an asbestos containing material or any other material defined as containing asbestos by any laws, rules or regulations promulgated by the United States Government, the State of Texas or any governmental organization or agency operating under the authority of either of those entities.
2. Realizing that there might be some materials in which a satisfactory non-asbestos containing material could not be obtained, the Consultant has received prior approval from the OWNER before specifying any such asbestos containing material. Those approved materials are the only asbestos containing materials that are exempt from the above prohibition.
3. The CONTRACTOR certifies and affirms their understanding that if any asbestos containing materials not approved by the City of Austin for inclusion into the Project, are determined, as a result of any inspection and sample analysis performed by an individual(s) and/or firm(s) certified and/or licensed to perform such inspection by the United States Government and/or the State of Texas, to have been incorporated into the construction of the Project, or brought onto the site of the Project, the OWNER shall look to the CONTRACTOR for reimbursement of any and all costs incurred in the removal and/or other abatement of said asbestos containing materials.

4. CONTRACTOR further understands that OWNER shall also look to the CONTRACTOR for any and all damages to OWNER which result from the inability of the OWNER to use any portion or all of the Project due to the incorporation of asbestos containing materials that have not been approved by OWNER.
5. CONTRACTOR further understands that OWNER will pursue reimbursement of any said cost and compensation for any said damages from the CONTRACTOR by any and every means within OWNER's right and power.

Signature of Affiant:_____

STATE OF TEXAS
COUNTY OF TRAVIS

ON _____, 20_____, personally appeared _____ _____ and been duly sworn by me, subscribed to the foregoing affidavit and has stated that the facts stated therein are true and correct.

_____
Notary Public, State of Texas

_____
Printed Name of Notary

My Commission Expires: _____

End

NON-USE OF ASBESTOS AFFIDAVIT (CONTRACTOR AFTER CONSTRUCTION)

Section 00681

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared the Affiant who, being by me first duly sworn, upon oath deposed and stated:

"My name is _____, hereinafter known as Affiant.

"I am over the age of 18 years and I have never been convicted of a crime. I am the _____ of _____ hereinafter known as CONTRACTOR.

"I am fully competent to make this affidavit. I have personal knowledge of the facts set forth below and they are all true and correct.

"WHEREAS CONTRACTOR was awarded a Contract for, and was the Prime CONTRACTOR for the construction of _____ _____, located at _____, Austin, Texas, hereinafter known as Project, for the City of Austin, Texas, hereinafter known as OWNER, and

"WHEREAS asbestos in a dust form is a recognized health hazard, and

"WHEREAS the OWNER desires not to have any asbestos containing materials used or incorporated into the construction of the Project;

"THEREFORE the CONTRACTOR affirms and understands the following:

1. The CONTRACTOR, any person, firm or organization representing or represented by the CONTRACTOR, or employed by the CONTRACTOR has not caused or allowed any material to be incorporated into the construction of the project, or allowed any building material on the project site that is an asbestos containing material or any other material defined as containing asbestos by any laws, rules or regulation promulgated by the United States Government, the State of Texas or any governmental organization or agency operating under the authority of either of those entities.

2. Realizing that there were some materials in which a satisfactory non-asbestos containing material could not be obtained, the Consultant received prior approval from the OWNER before specifying any such asbestos containing material. Those approved materials were the only asbestos containing materials incorporated into the construction of the Project and are listed below, with their locations:

   _____

   _____

   _____

3. The CONTRACTOR certifies and affirms their understanding that if any asbestos containing materials not approved by the City of Austin for inclusion into the Project, are determined, as a result of any inspection and sample analysis performed by an individual(s) and/or firm(s) certified and/or licensed to perform such inspection by the United States Government and/or the State of Texas, to have been incorporated into the

construction of the Project, or brought onto the site of the Project, the OWNER shall look to the CONTRACTOR for reimbursement of any and all costs incurred in the removal and/or other abatement of said asbestos containing materials.

4. CONTRACTOR further understands that OWNER shall also look to the CONTRACTOR for any and all damages to OWNER which result from the inability of the OWNER to use any portion or all of the Project due to the incorporation of asbestos containing materials that have not been approved by OWNER.

5. CONTRACTOR further understands that OWNER will pursue reimbursement of any said cost and compensation for any said damages from the CONTRACTOR by any and every means within OWNER's right and power.

Signature of Affiant:_____

STATE OF TEXAS
COUNTY OF TRAVIS

ON _____, 20_____, personally appeared _____ _____ and been duly sworn by me, subscribed to the foregoing affidavit and has stated that the facts stated therein are true and correct.

_____
Notary Public, State of Texas

_____
Printed Name of Notary

My Commission Expires: _____

End

General Conditions Table of Contents

ARTICLE 1 - DEFINITIONS....2
ARTICLE 2 - PRELIMINARY MATTERS....7
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE....10
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS....11
ARTICLE 5 - BONDS AND INSURANCE....14
ARTICLE 6 - CM'S RESPONSIBILITIES....16
ARTICLE 7 - OTHER WORK....27
ARTICLE 8 - OWNER'S RESPONSIBILITIES....28
ARTICLE 9 - A/E'S STATUS DURING CONSTRUCTION....29
ARTICLE 10 - CHANGES IN THE WORK....31
ARTICLE 11 - CHANGE OF CONTRACT AMOUNT....33
ARTICLE 12 - CHANGE OF CONTRACT TIMES....35
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK....38
ARTICLE 14 - PAYMENTS TO CM AND COMPLETION....41
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION....47
ARTICLE 16 - DISPUTE RESOLUTION....49
ARTICLE 17 - MISCELLANEOUS....52

ARTICLE 1 – DEFINITIONS

THE CONSTRUCTION MANAGER-AT-RISK IS ALSO REFERRED TO AS THE "CONTRACTOR" AND THE "BIDDER" (OR "OFFEROR") IN THE CONTRACT DOCUMENTS AND MAY ALSO BE REFERRED TO AS THE "MANAGER", THE "CMAR", THE "CM", AND THE "CMR", ALL OF WHICH WILL BE UNDERSTOOD TO MEAN THE "CONSTRUCTION MANAGER-AT-RISK" AS IDENTIFIED IN THE AGREEMENT.

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

Whenever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 **Addendum -** Written instruments issued by the Contract Awarding Authority which clarify, correct or change the bidding requirements or the Contract Documents prior to the Due Date. "Addenda" is the plural form of Addendum.

1.2 **Agreement -** The written Construction Manager at Risk Agreement for the Austin Film Society Austin Studios Renovations Project into which these General Conditions have been incorporated.

1.3 **Alternative Dispute Resolution -** The process by which a disputed Claim may be settled if the OWNER and the CM cannot reach an agreement between themselves, as an alternative to litigation.

1.4 **Architect / Engineer (A/E)** -- The Owner's design professional identified as such in the Contract. See Section 1.5 of the Agreement. References to A/E in these General Conditions shall refer to the Owner's Principal Architect/Engineer, except as otherwise expressly provided herein. Nothing contained in the Contract Documents shall create any contractual or agency relationship between the respective A/E and CM.

1.5 **Baseline Schedule** is the Schedule required under Section 2.4.2 for a specific Work Package or other scope of the Work and must conform to and be integrated with the CM's Progress Schedule for the Work.

1.6 **Bid -** A complete, properly signed response to an Invitation for Bid that, if accepted, would bind the Bidder to perform the resultant Contract.

1.7 **Bidder -** A person, firm, or entity, also referred to as the Offeror that submits a Bid or Proposal in response to a Solicitation. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.

1.8 **Bid Documents -** The advertisement or Invitation for Bids, Invitation for Proposals, Instructions to Bidders, the Bid form, the Contract Documents and Addenda.

1.9 **Calendar Day -** Any day of the week; no days being excepted. Work on Saturdays, Sundays, and/or Legal Holidays shall be coordinated with Owner.

1.10 **Change Directive -** A written directive to CM, signed by Owner, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time Requirements, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive does not change the Contract Amount or Contract Time Requirements, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.

1.11 Change Orders - Written agreements entered into between CM and Owner authorizing an addition, deletion, or revision to the Contract, issued on or after the Execution Date of the Agreement.

1.12 CIT Consultant – Owner's consultant responsible for the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Work by the Owner as required by Section 2269.058 of the Texas Local Government Code.

1.12 Claim - A written demand seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.

1.13 Construction Cost Limitation means the cost limit or budget for construction which must not be exceeded and which is more particularly defined in the Agreement.

1.14 Construction Documents means the Plans or Drawings and the Specifications and such other documents incorporated into the Contract Documents that set out the CM's scope of services to be performed under the Contract and/or the technical requirements for the design and construction of the Project.

1.15 Construction Phase means the implementation and execution of the Work required by the Contract Documents, commencing with the Notice to Proceed in the GMP Amendments or as applicable, Work Package Authorization Amendment(s). The construction of the Project may be divided into different stages with owner concurrence each with different dates for implementation and completion.

1.16 Construction Trades Package means portions of the Work (including portions of the Work under specific Work Packages) that have been assembled into a sub-set of Construction Documents that will be used for securing Competitive Sealed Proposals as part of the solicitation of portions of the Work.

1.17 Contract - The binding legal agreement between the OWNER and the CM. The Contract represents the entire and integrated agreement between OWNER and CM for performance of the Work, as evidenced by the Contract Documents.

1.18 Contract Amount - The moneys payable by OWNER to CM for completion of the Work in accordance with the Contract Documents.

1.19 Contract Awarding Authority - A City department authorized to enter into Contracts on behalf of the City.

1.20 Contract Documents – See Article 4 of the Agreement.

1.21 Contract Time Requirements means those requirements for the timely performance of the Work as set forth in Article 2 of the Agreement.

1.22 CM - The individual, firm, corporation, or other business entity with whom Owner has entered into the Contract for performance of the Work.

1.23 Cost Management Report means the report as further defined in the Agreement that compares the Construction Cost Limitation, in Preconstruction Phase to CM's estimated construction costs, and in Construction Phase to CM's actual construction costs, and which is updated as needed.

1.24 Critical Path - The longest series of tasks that runs consecutively from the beginning to the end of the project, as determined by duration and workflow sequence. This longest path sets the managerial standard for how quickly a project can be completed, given appropriate resources.

1.25 Day means that twenty-four hour period measured from midnight to the next midnight. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period.

1.26 Discrepancies mean any error, omission, conflict, inconsistency, discrepancy, or lack of clarity in the Contract Documents discovered by the CM or that should reasonably have been discovered by the CM in fulfilling its obligations arising from the Contract and based upon its applicable standard of care as a construction manager at risk and not as a design professional.

1.27 Division 1 means the General Requirements Division (Division One) of the Specifications made a part of the Construction Documents, whether such Specifications are set out in a separate document or are part of the Project Manual.

1.28 Drawings - Those portions of the Contract Documents which are graphic representations of the scope, extent and character of the Work to be furnished and performed by CM and which have been approved by Owner. Drawings may include plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so defined.

1.29 Due Date - The date and time specified for receipt of Bids or Proposals.

1.30 Equal - The terms "equal" or "approved equal" shall have the same meaning.

1.31 Execution Date - Date of last signature of the parties to the Agreement.

1.32 Field Order - A written order issued by Owner's Representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or the Contract Time Requirements.

1.33 Final Completion - The point in time when Owner determines that all Work has been completed and final payment to CM will be made in accordance with the Contract Documents.

1.34 Force Account - a basis of payment for the direct performance of Work with payment based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 11.5.

1.35 Hazardous Conditions are any materials, wastes, substances, and chemicals deemed to be hazardous under applicable Legal Requirements or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.36 Inspector - The authorized representative of any regulatory agency that has jurisdiction over any portion of the Work.

1.37 Invitation for Bid (IFB) - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or the Internet.

1.38 Legal Requirements are all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any governmental or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project or Site or any Work

1.39 Legal Holidays

1.39.1 The following are recognized by the Owner:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving

Christmas Eve	December 24
Christmas Day	December 25

1.39.2 If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.39.3 Christmas Eve is observed only if it falls on a Monday through Thursday. If Christmas Eve falls on a Friday, that day is observed as the Christmas Day holiday.

1.40 **Major Subcontractor** means a Subcontractor of the CM for the Construction Phase of the Project whose contract amount with the CM exceeds or is reasonably expected to exceed the sum of $50,000.00.

1.41 **Milestones** means a significant event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.42 **Modification** means a written amendment to the Contract, including but not limited to (1) a Work Authorization Amendment, signed by both parties, (2) a Change Order, and (3) a Change Directive.

1.43 **M/WBE Subcontracting Compliance Plan** means the plan submitted and updated by the CM in accordance with and as required to comply with the rules and ordinances Owner has adopted with regards to the solicitation, use, addition or removal of M/WBE firms, attached and incorporated as an Appendix to the Project Manual. CM, as a provision of the Agreement, must comply with the Owner's M/WBE Subcontracting Procurement Program in the Preconstruction and Construction phases of the Project, and during the administration of the Work.

1.44 **Notice to Proceed -** A Written Notice given by Owner to CM fixing the date on which the Contract Time Requirements will commence to run and on which CM shall start to perform CM's obligations under the Contract Documents.

1.45 **OWNER -** City of Austin, Texas, a municipal corporation, home rule city and political subdivision organized and existing under the laws of the State of Texas, acting through the City Manager or his/her designee, officers, agents or employees to administer design and construction of the Project.

1.46 **Owner's Representative -** The designated representative of the Owner.

1.47 **Partial Occupancy or Use -** Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work, provided Owner and CM have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, utilities, corrective work, insurance and warranties.

1.48 **Preconstruction Phase** means the portion of the Project in which a constructability review and report are generated; a Progress Schedule is generated; a review of the Construction Documents for Discrepancies occurs and a report of any Discrepancies is generated; and Subcontractor selection occurs.

1.49 **Project -** The subject of the Work and its intended result.

1.50 **Project Manual -** That portion of the Contract Documents which may include the following: introductory information; solicitation or bidding requirements, Contract forms and General and Supplemental General Conditions; General Requirements; Specifications; Drawings; MBE/WBE or DBE Procurement Program Package; Project Safety Manual; and Addenda.

1.51 **Project Team** means the Owner, the Owner's Representative, the CM, the Principal Architect/Engineer, any consultants of the Principal Architect/Engineer designated by

the Owner, any Owner's Third Party Contractors, and any Owner's consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different stages of the Work. The Project Team will be designated by and may be modified from time to time by Owner.

1.52 Resident Project Representative - The authorized representative of A/E who may be assigned to the site or any part thereof.

1.53 Shop Drawings - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CM and submitted by CM as required by the Contract Documents.

1.54 Site is the land or premises on which the Project is located.

1.55 Specifications - Those portions of the Contract Documents furnished by OWNER through its respective Architects/Engineers consisting of written technical descriptions as applied to the Work, which set forth to CM, in detail, the requirements which must be met by all materials, equipment, construction systems, standards, workmanship, equipment and services in order to render a completed and useful project.

1.56 Solicitation - Solicitation means, as applicable, an Invitation for Bid or a Request for Proposal.

1.57 Stipulated Sum means a lump sum amount for the Work in a Phase of the Project.

1.58 Substantial Completion - The stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so OWNER can occupy or utilize the Work for its intended use, as evidenced by a Certificate of Substantial Completion approved by Owner.

1.59 Subcontractor - An individual, firm, corporation, or other business entity having a direct contract with the CM for the performance of a portion of the Work under the Contract. A Subcontractor includes a supplier of tools, equipment or materials as well as an individual or entity renting tools or equipment to the CM.

1.60 Sub-Subcontractor - An individual, firm, corporation, or other business entity who has a direct or indirect contract with a Subcontractor of any tier to perform a portion of the Work, to furnish tools, equipment or materials, or to rent tools or equipment.

1.61 Superintendent - The representative of CM authorized in writing to receive and fulfill instructions from the Owner's Representative, and who shall supervise and direct construction of the Work.

1.62 Supplemental General Conditions - The part of the Contract Documents which amends or supplements the General Conditions. All General Conditions which are not so amended or supplemented remain in full force and effect.

1.63 Supplier - An individual or entity having a direct contract with CM or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CM or any Subcontractor.

1.64 Value Engineering means the systematic application of recognized techniques by a multi-disciplined team to identify the function of a product or service, establish a worth for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the Project, reliably, without sacrificing safety, necessary quality, and environmental attributes of the Project.

1.65 Work - The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.

1.66 Working Day - Any day of the week, not including Saturdays, Sundays, or Legal Holidays in which conditions under the CM's control will permit work for a continuous

period of not less than seven (7) hours during Working Hours. Upon agreement with Owner's Representative, work on Saturdays, Sundays and/or Legal Holidays may be allowed and will be considered a Working Day.

1.66.1 **Working Day Contract:** All Work shall be done between 7:00 a.m. and 6:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. If night Work is authorized and conditions under CM's control will permit Work for a continuous period of not less than seven (7) hours between 12:00 a.m. and 11:59 p.m. it will be considered a Working Day. Night Work may be revoked at any time by Owner if CM fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.

1.66.2 **Calendar Day Contract:** All Work shall be done between 7:00 a.m. and 6:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. Night Work may be revoked at any time by OWNER if CM fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.

1.67 **Written Notice -** Written communication between Owner and CM. Written Notice shall be deemed to have been duly served if delivered in person to Owner's Representative or CM's duly authorized representative, or if delivered at or sent by registered or certified mail to the attention of Owner's Representative or CM's duly authorized representative at the last business address known to the party giving notice.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 **Delivery of Agreement, Bonds, Insurance, etc.:** Within five (5) Working Days after written notification of award of Contract, CM shall deliver to Owner signed Agreement, Bond(s), Insurance Certificate(s) and other documentation required for execution of Contract.

2.1.1 CM shall complete enrollment in the Owner Controlled Insurance Program (OCIP) within ten (10) Calendar Days after written notification of award of Contract.

2.2 **Copies of Documents:** Owner shall furnish to CM one (1) Project Manual with original signatures, one (1) copy of the executed Project Manual, one (1) set of Drawings and one (1) copy of the Contract Documents in .pdf format. Additional copies will be furnished, upon request, at the cost specified in the Supplemental General Conditions.

2.3 **Commencement of Contract Times; Notice to Proceed:** The applicable Contract Time Requirements will begin to run on the day indicated in the Notice to Proceed for the Work covered in such Notice. Notice to Proceed with regard to the Preconstruction Phase Services will be given at any time within sixty (60) calendar days after the Execution Date of the Agreement, unless extended by written agreement of the parties.

2.4 **Before Starting Construction:**

2.4.1 No Work shall be done at the site with regard to a Work Package prior to the preconstruction conference for such Work Package without Owner's approval. Before undertaking each part of the Work, CM shall carefully study the Contract Documents to check and verify pertinent figures shown thereon compare accurately to all applicable field measurements. CM shall promptly report in writing to Owner's Representative any conflict, error, ambiguity or discrepancy which CM may discover and shall obtain a written interpretation or clarification from Owner's Representative before proceeding with any Work

affected thereby. CM shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which CM knew or reasonably should have known.

2.4.2 It is mutually agreed between CM and Owner that successful completion of the Work within the applicable Contract Time Requirements is of primary importance. Therefore, the CM hereby agrees to submit to the Owner's Representative for review and approval, or acceptance, as appropriate, all information requested within this section, including a Baseline Schedule for the respective Work to be commenced, no later than five (5) working days prior to the preconstruction conference. The Owner's Representative will schedule the preconstruction conference upon the timely submittal of the required documents, unless time is extended by written mutual agreement. CM will submit the following:

.1 A proposed Baseline Schedule (the "Baseline Schedule") for the respective Work to be commenced developed using the scheduling software authorized in Section 6.3 of the Agreement, unless otherwise approved by Owner's Representative to confirm that all Work will be completed within the respective Contract Time Requirements. The Baseline Schedule must (i) indicate the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents, (ii) identify the Critical Path for completing the Work, (iii) identify when all Subcontractors will be utilized, and (iv) take into consideration any limitations on Working Hours, including baseline Rain Days on Calendar Day Contracts, and (v) be prepared in accordance with City Standard Document -- Section 01310, Schedules and Reports, if applicable, otherwise in accordance with Section 01300 Submittals. Such Baseline Schedule shall also be consistent with the Project Schedule and the CM's Progress Schedule. This Baseline Schedule, a copy of which shall be made available at the job site(s), must contain sufficient detail to indicate that the CM has properly identified required Work elements and tasks, has provided for a sufficient and proper workforce and integration of Subcontractors, has provided sufficient resources and has considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract time;

.2 An organizational chart showing the principals and management personnel who will be involved with the Work, including each one's responsibilities for the Work;

.3 To the extent not set forth in the Request for Qualifications for a Construction Manager-at-Risk -- Section 00400CMR Statement of CM's Experience, a complete listing of the CM's employees proposed for the Work. List each one by name and job title, and show length of employment with CM;

.4 To the extent not set forth in the Request for Qualifications for a Construction Manager-at-Risk -- Section 00410 Statement of Bidder's Safety Experience, a discussion and confirmation of the CM's commitment to safety by providing a copy of its employee's safety handbook and the safety records for the past three years of CM's proposed project manager and Superintendent;

.5 A preliminary schedule of Shop Drawing and sample submittals;

.6 A preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress

payments during construction. At a minimum, the schedule of values shall be broken out by trade and split between materials and labor. Such prices will be deemed to include an appropriate amount of overhead and profit applicable to each item of Work;

.7 To the extent not set forth in the Request for Qualifications for a Construction Manager-at-Risk -- Section 00400CMR Statement of CM's Experience, a letter designating CM's Superintendent and project manager, and a confirmation of past project experience for the CM's Superintendent and project manager specifically intended for the Work;

.8 A letter from CM and Subcontractor(s) listing salaried specialists. A salaried specialist is anyone except an hourly worker whose wage rate is governed by City Standard Document -- Section 00830;

.9 A letter designating the "Competent Person(s)" on general safety and excavation safety measures along with certifications or other documentation of the safety representative's qualifications;

.10 If applicable, an excavation safety system plan;

.11 If applicable, a plan illustrating proposed locations of temporary facilities;

.12 A completed Non-Use of Asbestos Affidavit (Prior to Construction); and

.13 A letter designating the Texas Registered Professional Land Surveyor for layout of the Work, if the Work requires the services of a surveyor.

.14 Appropriate safety training certificates for workers that will initially be on site;

.15 A certificate of worker's compensation insurance coverage for all persons providing services on the Project (refer to 5.2.1.3 in Section 00700CMR for definition of persons providing services on the Project);

.16 A Construction Equipment Emissions Reduction Plan.

2.4.3 Neither the acceptance nor the approval of any of the submittals required in Section 2.4.2, above, will constitute either the adoption, affirmation, or direction of the CM's means and methods.

2.1 **Preconstruction Conference:** Prior to commencement of Work at the site, CM must attend a preconstruction conference with Owner's Representative and others, as set forth in Division 1. Additionally, CM agrees to notify and host a preconstruction conference for the Subcontractors identified on the approved initial M/WBE Subcontracting Compliance Plan, Owner's Representative and others, as set forth in Division 1. CM will provide documentation of proof of the preconstruction conference upon request of the Owner. If CM includes Subcontractors at the initial preconstruction conference with the Owner, then the additional preconstruction conference will not be required.

2.2 **Initially Acceptable Schedules:** Unless otherwise provided in the Contract Documents, CM shall obtain approval of Owner's Representative on the Baseline Schedule submitted in accordance with Section 2.4.2.1 and Division 1 before the first progress payment will be made to CM. The Baseline Schedule must provide for an orderly progression of the designated portion of the Work to completion within the Contract Time Requirements, including any specified Milestones. Acceptance of the schedule by Owner's Representative will neither impose on Owner's Representative responsibility or liability for the sequencing, scheduling or progress of the Work nor interfere with or relieve CM from CM's full responsibility for such Work. CM's schedule of Shop Drawings and sample submissions must provide an acceptable basis for reviewing

and processing the required submittals. CM's schedule of values must conform to the requirements set forth in Division 1.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 **Intent:** The intent of the Contract Documents is to include all information necessary for the proper execution and timely completion of the Work by CM. The CM will execute the Work described in and reasonably inferable from the Contract Documents as necessary to produce the results indicated by the Contract Documents. The Contract Documents are complementary and shall be interpreted in accordance with the Rules of Interpretation as set forth in the Agreement, with the understanding that a common sense approach will be utilized as necessary so that the Contract Documents produce the intended response.

3.2 **Reporting and Resolving Discrepancies:** If, during the performance of the Work, CM discovers any Discrepancy within the Contract Documents or between the Contract Documents and any provisions of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or instructions of any Supplier, CM shall report it to Owner's Representative in writing at once, and CM shall not proceed with the Work affected thereby until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Section 3.3.1 or 3.3.2. CM shall be liable to OWNER for failure to report any such Discrepancy of which CM knew or should reasonably have discovered in fulfilling its obligations arising from the Contract and based upon its applicable standard of care as a construction manager at risk and not as a design professional.

3.3 **Amending and Supplementing Contract Documents:**

3.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

.1 Change Order.

.2 Change Directive.

.3 Modification.

3.3.2 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

.1 Field Order.

.2 Shop Drawing or sample approved in accordance with the Contract Documents.

.3 Written interpretation or clarification issued in accordance with the Contract Documents.

3.4 Reuse of Documents Prohibited: CM and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Owner: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of A/E or A/E's consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of Owner and A/E.

3.5 In the event of the breach by the Owner or CM of any of its obligations under the Contract, so as to support a claim by the other party, the provisions of this Contract will

be equitably construed to allow the resolution of such a claim and all of the other provisions of this Contract shall continue in full force and effect as to the rights, responsibilities, and remedies of the Owner and CM.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands: The Owner will provide access to all land and interests in land required for the Work and will notify CM of any restrictions in such access. CM may make a claim if OWNER fails to provide timely access to the Work. CM must obtain any additional temporary construction facilities, stockpiling or storage sites not otherwise provided.

4.1.1 To the extent that terms of any special easement(s) relating to the Work are made part of the Contract Documents and in the event that the actions of the CM or its Subcontractors cause the Work to be delayed to the point that the ending date of such an easement has been exceeded, except where such delay is excused under the Contract Documents, the CM shall be responsible to reimburse the Owner for any additional costs required to extend the period of rights to any such easement in order to complete the Work. This delay shall be considered to be any period of time required by the CM to fully and satisfactorily execute the Work that is in addition to the original Contract duration, as modified by any executed Contract change orders.

4.2 Subsurface and Physical Conditions:

4.2.1 CM specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the site of the proposed Work and is thoroughly familiar with all of the conditions surrounding construction of the Project, having had the opportunity to conduct any and all additional inquiry, tests and investigation that he/she deems necessary and proper. CM acknowledges the receipt of the geotechnical report, if any, and agrees that the report, while it is an accurate record of the geotechnical conditions at the boring locations, is not a guarantee of specific site conditions which may vary between boring locations.

4.2.2 Except as provided in Subsection 4.2.5 below, CM must notify Owner in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Contract. CM may not disturb the conditions until Owner conducts an investigation. Owner's Representative and A/E will promptly investigate such conditions with A/E. If it is determined that such conditions differ materially and cause an increase or decrease in the CM's cost of or time required for performance of any part of the Work, Owner's Representative will recommend an equitable adjustment in the Contract Amount or Contract Time Requirements, or both. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, Owner's Representative will notify CM in writing of such findings and the Contract will not be adjusted. CM may dispute such a determination in accordance with Article 16.

4.2.3 Notwithstanding any other provision of this Contract, CM is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Work area. "Public utility lines" means the utility

distribution and supply system, and "utility customer service lines" means the utility lines connecting customers to the utility distribution and collection system. Generally, existing utility customer service line connections are not shown on the Drawings. CM shall notify "One Call" and exercise due care to locate, mark, uncover and otherwise protect all such lines in the construction zone and any of CM's work or storage areas. CM's responsibility for the location and protection of utilities is primary and non-delegable. CM **shall indemnify or reimburse such expenses or costs (including fines that may be levied against Owner) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area.** Owner reserves the right to repair any damage CM causes to such utilities at CM's expense. If a public line and/or customer service line is damaged by CM, CM shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to the Owner's Representative.

4.2.4 CM shall take reasonable precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of OWNER and Texas Historical Commission. When such objects are uncovered unexpectedly, CM shall stop all Work in close proximity and notify Owner's Representative and Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities uncovered on Owner's property shall remain property of State of Texas, Texas Historical Commission conforming to Texas Natural Resources Code. If it is determined by Owner, in consultation with Texas Historical Commission, that exploration or excavation of primitive records or antiquities on Project site is necessary to avoid loss, CM shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in CM's cost of, or time required for, performance of the Work, the Contract Amount and/or Contract Time Requirements will be equitably adjusted.

4.2.5 **Environmental Conditions.** CM must notify OWNER in writing as soon as reasonably possible, but no later than one (1) calendar day after any significant environmental conditions are encountered at the site which are or may be subject to any Legal Requirements. CM may not disturb the conditions until OWNER conducts an investigation. Owner's Representative and A/E will promptly investigate such conditions with A/E. If it is determined that such conditions are subject to Legal Requirements and cause an increase or decrease in the CM's cost of or time required for performance of any part of the Work, Owner's Representative will recommend an equitable adjustment in the Contract Amount or Contract Time Requirements, or both. If it is determined that such conditions are not subject to Legal Requirements, Owner's Representative will notify CM in writing of such findings and the Contract will not be adjusted. CM may dispute such a determination in accordance with Article 16.

4.3 **Reference Points:** Unless otherwise specified, all control lines and bench marks suitable for use in layout will be furnished by Owner. Lay out of the Work shall be performed in accordance with Division 1. Controls, bench marks and property boundary markers shall be carefully preserved by CM by use of flags, staffs or other visible devices and in case of destruction or removal by CM or its employees, such controls and bench marks shall be replaced by a Registered Professional Land Surveyor at CM's expense. City of Austin survey monuments damaged by CM will be reestablished by Owner at CM's expense.

4.4 **Hazardous Materials or Conditions:**

4.4.1 To the extent provided by applicable law, Owner shall be responsible for any hazardous material or Hazardous Conditions uncovered or revealed at the site which was not shown, indicated or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. CM shall immediately notify Owner's Representative of any suspected hazardous materials or conditions encountered before or during performance of the Work and shall take all necessary precautions to avoid further disturbance of the materials.

4.4.2 CM shall be responsible for any hazardous materials or conditions brought to the site by CM, Subcontractor, Suppliers or anyone else for whom CM is responsible.

4.4.3 No asbestos-containing materials shall be incorporated into the Work or brought on Project site without prior approval of OWNER. The CM shall not knowingly use, specify, request or approve for use any asbestos containing materials or lead-based paint without the Owner's written approval. When a specific product is specified, the CM shall endeavor to verify that the product does not include asbestos containing material.

4.4.4 Refer to Division 1 for hazardous material and conditions definitions and procedures.

.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, CM is not responsible for any unexpected Hazardous Materials or Conditions encountered at the site. Upon encountering any Hazardous Conditions, CM must stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, applicable law or regulations, all government or quasi-government entities with jurisdiction over the Project or site.

.2 Upon receiving notice of the presence of suspected Hazardous Materials or Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Materials or Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Materials or render the Hazardous Materials or Conditions harmless.

.3 CM shall be obligated to resume Work at the affected area of the Project only after Owner's Representative provides written certification that (i) the Hazardous Materials or Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or site. The CM shall be responsible for continuing the Work in the unaffected portion of the Project and site.

.4 CM will be entitled, in accordance with these General Conditions, to an adjustment in its Contract Amount and/or Contract Time Requirements to the extent CM's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials or Conditions.

.5 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Materials or Conditions introduced to the Site by CM, Subcontractors or anyone for whose acts they may be liable. CM **shall indemnify, defend and hold harmless Owner and Owner's**

officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous materials or conditions introduced to the site by CM, Subcontractors or anyone for whose acts they may be liable.

4.4.5 CM shall be responsible for use, storage and remediation of any hazardous materials or conditions brought to the Site by CM, Subcontractors, Suppliers or anyone else for whom CM is responsible.

ARTICLE 5 - BONDS AND INSURANCE

5.1 Surety and Insurance Companies: All bonds and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to OWNER and shall be issued by a surety which complies with the requirements of Texas Insurance Code Title 12, Chapter 3503. The surety must obtain reinsurance for any portion of the risk that exceeds 10% of the surety's capital and surplus. For bonds exceeding $100,000, the surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

5.2 Workers' Compensation Insurance Coverage:

5.2.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

.2 Duration of the Project - includes the time from the beginning of the Work on the Project until the CM's/ person's Work on the Project has been completed and accepted by Owner.

.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code, Section 406.096) - includes all persons or entities performing all or part of the services the CM has undertaken to perform on the Project, regardless of whether that person contracted directly with the CM and regardless of whether that person has employees. This includes, without limitation, independent contractors, Subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

5.2.2 CM shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CM providing services on the Project, for the duration of the Project.

5.2.3 CM must provide a certificate of coverage to Owner prior to being awarded the Contract.

5.2.4 If the coverage period shown on the CM's current certificate of coverage ends during the duration of the Project, the CM must, prior to the end of the coverage period, file a new certificate of coverage with Owner showing that coverage has been extended.

5.2.5 CM shall obtain from each person providing services on the Project, and provide to Owner:

.1 A certificate of coverage, prior to that person beginning Work on the Project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.2 No later than seven (7) days after receipt by CM, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

5.2.6 CM shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

5.2.7 CM shall notify Owner in writing by certified mail or personal delivery, within ten (10) days after CM knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

5.2.8 CM shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

5.2.9 CM shall contractually require each person with whom it contracts to provide services on a Project, to:

.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

.2 Provide to CM, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

.3 Provide CM, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.4 Obtain from each other person with whom it contracts, and provide to CM: a) a certificate of coverage, prior to the other person beginning Work on the Project; and b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.5 Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

.6 Notify OWNER in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change

that materially affects the provision of coverage of any person providing services on the Project; and

.7 Contractually require each person with whom it contracts, to perform as required by Sections 5.2.9.1 - 5.2.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.

5.2.10 By signing this Contract or providing or causing to be provided a certificate of coverage, CM is representing to Owner that all employees of the CM who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Worker's Compensation Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject CM to administrative penalties, criminal penalties, civil penalties, or other civil actions.

5.2.11 CM's failure to comply with any of these provisions is a breach of Contract by CM which entitles Owner to declare the Contract void if CM does not remedy the breach within ten (10) days after receipt of notice of breach from Owner.

5.3 Other Bond and Insurance Requirements: For additional insurance requirements, refer to the Supplemental General Conditions.

5.4 Bonds:

5.4.1 General.

.1 Bonds, when required, shall be executed on forms furnished by or acceptable to Owner. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

.2 If the surety on any bond furnished by CM is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CM shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to Owner.

.3 When Performance Bonds and/or Payment Bonds are required, each shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CM's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent corporate surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by Owner pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of ten percent (10%) of its capital and surplus. Such a surety must reinsure any obligations over ten percent (10%).

5.4.2 Performance Bond.

.1 If the Contract Amount exceeds $100,000, CM shall furnish Owner with a Performance Bond in the form set out in City Standard Document -- Section 00610.

.2 If the Contract Amount exceeds $25,000 but is less than or equal to $100,000, CM shall furnish Owner with a Performance Bond in the form set out in City Standard Document -- Section 00610, unless the original Contract Time is 60 Calendar Days/40 Working Days or less, in which case

CM can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no moneys will be paid to CM until completion and acceptance of the Work by Owner; CM shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one (1) year warranty period.

.3 If the Contract Amount is less than or equal to $25,000, CM will not be required to furnish a Performance Bond; provided that no moneys will be paid to CM until completion and acceptance of the Work by Owner under the following terms and conditions: CM shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one (1) year warranty period.

.4 If a Performance Bond is required to be furnished, it shall extend for the one (1) year warranty period.

5.4.3 Payment Bond.

.1 If the Contract Amount exceeds $25,000, CM shall furnish Owner with a Payment Bond in the form set out in City Standard Document -- Section 00620.

.2 If the Contract Amount is less than or equal to $25,000, CM will not be required to furnish a Payment Bond; provided that no moneys will be paid to CM until completion and acceptance of the Work by Owner under the terms and conditions specified in Section 5.4.2.3.

5.4.4 **Maintenance Bond:** If the Contract Documents contemplate a period of maintenance beyond the one (1) year contractual warranty period, Owner agrees that any bond to be required for such maintenance work will be in the amount of the maintenance work during any extended maintenance period.

5.5 **Owner's Liability Insurance**. Owner is a self-insured Texas municipality and governmental entity and does not maintain commercial general liability insurance coverage. Upon request, a letter of self-insurance will be provided by Owner.

ARTICLE 6 - CM'S RESPONSIBILITIES

6.1 Supervision and Superintendence:

6.1.1 CM shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CM shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CM shall be responsible to see that the completed Work complies accurately with the Contract Documents.

6.1.2 CM shall have an English-speaking, competent Superintendent on the Work at all times that work is in progress. The Superintendent will be CM's representative on the Work and shall have the authority to act on the behalf of CM. All communications given to the Superintendent shall be as binding as if given to CM. Either CM or the Superintendent shall provide a cellular telephone number and an emergency and home telephone number at which one or the other may be reached if necessary when work is not in progress. The Superintendent must be an employee of the CM, unless such requirement is waived in writing by the Owner's Representative. If the CM proposes a management structure with a Project Manager supervising, directing, and managing construction of the work in addition to or in substitution of a

Superintendent, the requirements of these Construction Documents with respect to the Superintendent shall likewise apply to any such Project Manager.

.1 CM shall present the resume of the proposed Superintendent to the Owner's Representative showing evidence of experience and successful superintendence and direction of work of a similar scale and complexity. If, in the opinion of the Owner's Representative, the proposed Superintendent does not indicate sufficient experience in line with the Work, he/she will not be allowed to be the designated Superintendent for the Work.

.2 The Superintendent shall not be replaced without Written Notice to Owner's Representative. If CM deems it necessary to replace the Superintendent, CM shall provide the necessary information for approval, as stated above, on the proposed new Superintendent.

.3 A qualified substitute Superintendent may be designated in the event that the designated Superintendent is temporarily away from the Work, but not to exceed a time limit acceptable to the Owner's Representative. CM shall replace the Superintendent upon Owner's request in the event the Superintendent is unable to perform to Owner's satisfaction.

6.2 Labor, Materials and Equipment:

6.2.1 CM shall maintain a work force adequate to accomplish the Work within the Contract Time Requirements. CM agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. CM, Subcontractors, Sub-subcontractors, and their employees may not use or possess any alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on Owner's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job. Subject to the applicable provisions of Texas law, CM, Subcontractors, Sub-subcontractors, and their employees may not use or possess any firearms or other weapons while on the job or on OWNER'S property. If OWNER or Owner's Representative notifies CM that any worker or representative of CM is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Texas law, or has possessed or was under the influence of alcohol or drugs on the job, CM shall immediately remove such worker or representative, including an officer or owner of CM, from performing Contract Work, and may not employ such worker or representative again on Contract Work without Owner's prior written consent. CM shall at all times maintain good discipline and order on or off the site in all matters pertaining to the Project. CM shall pay workers no less than the wage rates established in City Standard Document -- Section 00830, and maintain weekly payroll reports as evidence thereof, in accordance with the requirements of Chapter 2258 of the Texas Government Code.

6.2.2 Unless otherwise specified in Division 1, CM shall provide and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work, provided the Owner's CIT Consultant shall provide certain inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by Owner, as required by Section 2269.058 of the Texas Government Code.

6.2.3 All materials and equipment shall be of good quality and new (including new products made of recycled materials, pursuant to Section 361.426 of the Texas Health & Safety Code), except as otherwise provided in the Contract Documents. If required by Owner's Representative, CM shall furnish satisfactory evidence (reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.2.4 Substitutes and "Approved Equal" Items:

.1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains words reading that no like, equivalent or "approved equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted by CM, at CM's sole risk, including disruptions to the Critical Path of the Progress Schedule, to A/E through Owner's Representative under the following circumstances:

.1.1 "Approved Equal": If in A/E's sole discretion an item of material or equipment proposed by CM is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by A/E as an "approved equal" item, in which case review of the proposed item may, in A/E's sole discretion, be accomplished without compliance with some or all of the requirements for evaluation of proposed substitute items. CM shall provide A/E with the documentation required for A/E to make its determination.

.1.2 Substitute Items: If in A/E's sole discretion an item of material or equipment proposed by CM does not qualify as an "approved equal" item under Subsection 6.2.4.1.1, it will be considered a proposed substitute item. CM shall submit sufficient information as provided in Division 1 to allow A/E to determine that the item of material or equipment proposed is essentially equivalent to that named and a substitute therefor.

.2 Substitute Construction Methods and Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CM may, at CM's sole risk, including disruptions to the Critical Path of the Progress Schedule, with prior approval of A/E furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. CM shall submit sufficient information to Owner's Representative to allow A/E, in A/E's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by A/E will be same as that provided for substitute items in Division 1.

.3 A/E's Evaluation: A/E will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Subsections 6.2.4.1.1 and 6.2.4.1.2. A/E will be the sole judge of acceptability. No "approved equal" or substitute shall be ordered, installed, or utilized until A/E's review is complete, which will be evidenced by either a Change

Order or completion of the Shop Drawing review procedure. Owner may require CM to furnish at CM's expense a special performance guarantee or other surety bond with respect to any "approved equal" or substitute or for any other delay or disruption to the Critical Path of the Project Schedule attributable to any such substitution. Owner shall not be responsible for any delay due to review time for any "approved equal" or substitute.

.4 CM's Expense: All data and documentation to be provided by CM in support of any proposed "approved equal" or substitute item will be at CM's expense.

.5 The approval of the A/E will not relieve the CM from primary responsibility and liability for the suitability and performance of any proposed substitute item, method or procedure and will not relieve CM from its primary responsibility and liability for curing defective Work and performing warranty work, which the CM shall cure and perform, regardless of any claim the CM may choose to advance against the A/E or manufacturer.

6.2.5 CM agrees to assign to Owner any rights it may have to bring antitrust suits against its Suppliers for overcharges on materials incorporated in the Project growing out of illegal price fixing agreements. CM further agrees to cooperate with Owner should Owner wish to prosecute suits against Suppliers for illegal price fixing.

6.3 Progress Schedule: Unless otherwise provided in Division 1, CM shall adhere to the Baseline Schedule established in accordance with Section 2.6 as it may be adjusted from time to time as provided below:

6.3.1 CM shall submit to Owner's Representative for review and approval any proposed adjustments in the Progress Schedule that will not change the Contract Time Requirements (including Milestones) on a monthly basis. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. CM's Progress Schedule must show how the CM will consistently advance the progress of the Work in accordance with the Critical Path of the Work and the Contract Time Requirements, including Milestones. Such adjustments will conform generally to the Progress Schedule then in effect and additionally will comply with any provisions of Division 1 applicable thereto.

6.3.2 Proposed adjustments in the Progress Schedule that will change the Contract Time Requirements, including Milestones, shall be submitted in accordance with the requirements of Article 12. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. Such adjustments may only be made by a Change Order or Modification in accordance with Article 12.

6.4 Concerning Subcontractors, Suppliers and Others:

6.4.1 Assignment: CM agrees to retain direct control of and give direct attention to the fulfillment of this Contract. CM agrees not to, by Power of Attorney, or otherwise, assign said Contract without the prior written consent of Owner. In addition, without Owner's written consent, the CM will not subcontract the performance of the entire Work or the supervision and direction of the Work.

6.4.2 Award of Subcontracts for Portions of the Work: CM shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom Owner may have reasonable objection. Owner will communicate such objections by Written Notice. If Owner requires a change without good cause of any Subcontractor, person or organization previously

accepted by Owner, the Contract Amount shall be increased or decreased by the difference in the cost occasioned by any such change, and appropriate Change Order shall be issued. CM shall not substitute any Subcontractor, person or organization that has been accepted by Owner, unless the substitute has been accepted in writing by Owner. No acceptance by Owner of any Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of Owner to reject defective Work. CM shall comply with the applicable DBE or M/WBE requirements set forth in the Solicitation and Contract Documents for this Project with respect to removing, adding or substituting Subcontractors and the subcontracting process.

6.4.3 CM shall enter into written agreements with all Subcontractors and Suppliers which specifically binds the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents for the benefit of Owner and A/E. The Owner reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and Sub-subcontractors as indicated in other portions of the Contract Documents and these requirements shall be made a part of the agreement between CM and Subcontractor or Supplier. Subject to and in accordance with the above requirements, the CM must provide and will be deemed for all purposes to have provided in its contracts with Major Subcontractors or Suppliers on the Project (those contracts of more than $50,000) the following specific provision: alternative dispute resolution (Sections 16.2 and 16.3), which shall be mandatory in the event of a subcontractor or supplier claim and a prerequisite for the submission of any derivative claim. The CM's standard subcontract form is subject to the Owner's review and approval. The Owner may request and the CM will provide within five (5) working days a copy of any subcontract requested by the OWNER.

6.4.4 CM shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CM just as CM is responsible for CM's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between Owner and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or A/E to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by laws and regulations.

6.4.5 CM shall be solely responsible for efficiently scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CM in order to avoid any delays or inefficiencies in the prosecution of the Work. CM shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner's Representative through CM.

6.4.6 The divisions and sections of the Specifications and the identifications of any Drawings shall not control CM in dividing or delineating the Work to be performed by any specific trade.

6.4.7 CM shall pay each Subcontractor and Supplier their appropriate share of payments made to CM not later than ten (10) Calendar Days of CM's receipt of payment from OWNER. Upon request from Owner, the CM has two (2) Working Days to provide documentation verifying Payment to Subcontractor(s). The CM is required to notify the Subcontractor(s) in writing of rejection of Application for Payment within two (2) Working Days following notification by

Owner. Failure of CM to make payments properly to Subcontractors for labor, materials or equipment may be cause to reject future bids or proposals submitted by the CM and may be cause to reject an application for payment in accordance with paragraph 14.4.1.3.

6.4.8 To the extent allowed by Texas law, the Owner shall be deemed to be a third party beneficiary to each subcontract and may, if Owner elects, following a termination of the CM, require that the Subcontractor(s) perform all or a portion of unperformed duties and obligations under its subcontract(s) for the benefit of the Owner, rather than the CM; however, if the Owner requires any such performance by a Subcontractor for the Owner's direct benefit, then the Owner shall be bound and obligated to pay such Subcontractor the reasonable value for all Work performed by such Subcontractor to the date of the termination of the CM, less previous payments, and for all Work performed thereafter. In the event that the Owner elects to invoke its right under this section, Owner will provide notice of such election to the CM and the affected Subcontractor(s).

6.5 Patent Fees and Royalties:

6.5.1 CM shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid.

6.5.2 CM shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not a particular design, device, material, or process is specified by OWNER.

6.5.3 CM shall defend all suits or claims for infringement of any patent or copyright and shall save Owner harmless from any loss or liability, direct or indirect, arising with respect to CM's process in the formulation of its Bid or the performance of the Work or otherwise arising in connection therewith. Owner reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event CM shall indemnify and save harmless Owner from all costs and expenses of such defense as well as satisfaction of all judgments entered against Owner.

6.5.4 Owner shall have the right to stop the Work and/or terminate this Agreement at any time in the event CM fails to disclose to Owner or Owner discovers that CM's work methodology includes the use of any infringing design, device, material or process.

6.5.5 Permits, Fees: Unless otherwise provided in the Supplemental General Conditions, CM shall obtain and pay for all construction permits, licenses and fees required for prosecution of the Work.

6.6 Laws and Regulations:

6.6.1 CM shall give all notices and comply with all Legal Requirements applicable to furnishing and performing the Work, including arranging for and obtaining any required inspections, tests, approvals or certifications from any public body having jurisdiction over the Work or any part thereof. Except where otherwise expressly required by applicable laws and regulations, neither Owner nor A/E shall be responsible for monitoring CM's compliance with any laws and regulations.

6.6.2 Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. CM shall plan and execute its operations in compliance with all applicable Legal Requirements concerning control and abatement of water pollution and prevention and control of air pollution.

6.6.3 If CM performs any Work knowing or having reason to know that it is contrary to laws or regulations, CM shall bear all claims, costs, losses and damages arising therefrom; however, it shall not be CM's primary responsibility to make certain that the Specifications and Drawings are in accordance with all Legal Requirements, but this does not relieve CM of CM's obligations under Article 3.

6.7 Taxes:

6.7.1 CM shall pay only those sales, consumer, use and other similar taxes required to be paid by CM in accordance with the laws and regulations of the State of Texas in the performance of this public works contract.

6.7.2 Owner is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas.

6.8 Use of Premises:

6.8.1 CM shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CM shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of or in connection with the performance of the Work, CM shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CM **shall indemnify, defend and hold harmless OWNER, A/E, A/E'S Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including court costs and reasonable attorney's fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, A/E or any other party indemnified hereunder to the extent caused by or based upon performance of the work or failure to perform the Work.**

6.8.2 During the progress of the Work and on a daily basis, CM shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CM shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CM shall leave the site clean and ready for occupancy by Owner at Substantial Completion of the Work. CM shall, at a minimum, restore to original condition all property not designated for alteration by the Contact Documents. If the CM fails to clean up at the completion of the Work, Owner may do so and the cost thereof will be charged against the CM.

6.8.3 CM shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CM subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.9 Record Documents: CM shall maintain in a safe place at the site, or other location acceptable to Owner, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to Section 9.5) in good order and annotated to show all changes made during construction. These record documents together with all final samples and all final Shop Drawings will be available to Owner and A/E for reference during performance of the Work. Upon Substantial Completion of the Work, these record documents, samples and Shop Drawings shall be promptly delivered to Owner's Representative.

6.10 Safety and Protection:

6.10.1 CM shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Upon request, and prior to installation of measures, CM shall submit a site security plan for approval by Owner. By reviewing the plan or making recommendations or comments, Owner will not assume liability nor will CM be relieved of liability for damage, injury or loss. CM shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:

.1 all persons on the Work site or who may be affected by the Work;

.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

.3 other property at the site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

CM's responsibility for safety is not intended in any way to relieve Subcontractors of their own contractual and legal responsibility for complying with Legal Requirements and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages, or accidents resulting from their performance of portions of the Work.

6.10.2 CM shall comply with all applicable Legal Requirements, including but not limited to all laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CM shall notify owners of adjacent property and of underground facilities, and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in Section 6.11.1.2 and 6.11.1.3 caused, directly or indirectly, in whole or in part, by CM, Subcontractor, Supplier or any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CM (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, or A/E, or A/E's consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the faults or negligence of CM or any Subcontractor, Supplier or other person

or organization directly or indirectly employed by any of them). CM's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to Owner and CM in accordance with Article 14 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). Without limitation, CM shall comply with the following specific provisions:

It shall be the duty and responsibility of CM and all of its subcontractors to be familiar with and comply with 29 USC Section 651, et seq., the Occupational Safety and Health Act of 1970, as amended ("OSHA") and to enforce and comply with all provisions of this Act.

The CM and all of its subcontractors shall comply with all applicable requirements of Subpart P of Part 1926 of 29 C.F.R, OSHA Safety and Health Standards, Texas Health and Safety Code Section 756.023, as amended, and shall submit a unit price for the particular excavation safety systems to be utilized by the CM for all excavations which exceed a depth of five feet (5').

Before commencing any excavation which will exceed a depth of five feet (5'), the CM shall provide the Owner with detailed plans and specifications regarding the safety systems to be utilized. Said plans and specifications shall include a certification from a Texas licensed professional engineer indicating full compliance with the OSHA provisions cited above.

6.10.3 Safety Representative: CM shall designate in writing a qualified and experienced safety representative (the "Safety Representative") at the site whose duties and responsibilities shall include safety training; identifying and mitigating hazardous conditions and unsafe work practices; and developing, maintaining, and supervising the implementation of safe work practices and safety programs as deemed necessary and appropriate for the Project. The term "Safety Representative" includes any designated Safety Supervisor, Superintendent or Safety Manager. The Safety Representative shall exercise due diligence in the execution of all Project related safety duties. The Safety Representative shall report directly to a company executive, not an on-site project manager. Upon request of OWNER, CM shall provide certifications or other acceptable documentation of the Safety Representative's qualifications. The following requirements will be effective as of September 1, 2010:

.1 The Safety Representative shall present certification of completion of the OSHA 30-hour Construction Industry Training Outreach Program described at:

http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html

.2 The Safety Representative shall verify that all construction workers (defined as persons covered by a prevailing wage determination) on the job site, whether employed by the CONTRACTOR or subcontractors, have completed the OSHA 10-hour Construction Industry Training Outreach Program described at:

http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html

The Safety Representative must receive a certificate of training completion before allowing a worker on site and shall have all such certificates available for inspection by the Owner.

.3 The Safety Representative shall ensure that workers, including designated competent persons, have completed all applicable OSHA specific or other training needed to perform their job assignments. Training topics applicable to the scope of the current Project may include, but are not limited to,

scaffolds, fall protection, cranes, excavations, electrical safety, tools, concrete and masonry construction, steel erection, operation of motor vehicles and mechanized equipment.

.4 The Safety Representative shall post notice on the site of the Work stating that all workers shall have completed OSHA Construction Industry Training. The Owner may require, and the Safety Representative should consider providing a means of readily identifying workers who have completed the required training to monitor compliance with these requirements.

The Safety Representative shall ensure that all required OSHA and Workers Compensation notices to workers are posted in English and Spanish at one or more conspicuous locations on the work site.

6.10.4 Hazard Communication Programs: CM shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws and regulations.

6.10.5 Emergencies:

.1 In emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto, CM, without special instruction or authorization from OWNER or A/E, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. CM shall give Owner's Representative telephone notification as soon as reasonably practical and a prompt written notice if CM believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner's Representative determines that a change in the Contract Documents is required because of the action taken by CM in response to such an emergency, a Change Directive or Change Order will be issued to document the consequences of such action; otherwise Owner will not be responsible for CM's emergency action.

.2 Authorized agents of CM shall respond immediately to call-out at any time of any day or night when circumstances warrant the presence on Project site of CM or his agent to protect the Work or adjacent property from damage, restriction or limitation or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should CM and/or their agent fail to respond and take action to alleviate such an emergency situation, Owner may direct other forces to take action as necessary to remedy the emergency condition, and OWNER will deduct any cost of such remedial action from the funds due CM under this Contract.

.3 In the event there is an accident involving injury to any individual or damage to any property on or near the Work, CM shall provide to Owner's Representative verbal notification within one (1) hour and written notification within twenty-four (24) hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports, police accident reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner's Representative, for Owner's and A/E's records, within forty-eight (48) hours of the event. CM shall cooperate with Owner on any Owner investigation of any such incident.

6.10.6 Rest Breaks

.1 Except as provided in subsection 6.11.6.2 below, an employee performing construction activity at a construction site is entitled to a rest break of not less than ten (10) minutes for every four (4) hours worked. No employee may be required to work more than 3.5 hours without a rest break. A rest break means a break from work within working hours, excluding meal breaks, during which an employee may not work. A rest break shall be scheduled as near as possible to the midpoint of the work period.

.2 An employee is not entitled to a rest break under subsection 6.11.6.1 on any day the employee works less than 3.5 hours or spends more than half of his or her work time engaged in non-strenuous labor in a climate controlled environment.

.3 A sign describing the requirements of this Section 6.11.6 in English and Spanish shall be posted by the employer in each establishment subject to the requirement of a rest break in a conspicuous place or places where notices to employees are customarily posted, in accordance with the Owner's then current rules for size, content, and location of such signage.

.4 The violation of Ordinance No. 20100729-047, enacted July 29, 2010, which establishes the rest break requirements set forth above, may be enforced with criminal penalties and civil remedies, as set forth in the Ordinance.

6.10.7 Documents so that a If the CM fails to carry out the Work in accordance with the Contract serious or imminent danger safety violation has occurred, the Owner may order the CM to stop the Work or any portion thereof, until the cause for such order has been eliminated. However, the right of the Owner to stop the Work under this paragraph shall not give rise to a duty on the part of the Owner to supervise the CM's Work or to control the CM's means and methods or to exercise this right for the benefit of the CM or any other person or entity. All time lost due to Project shut down will be the CM's sole responsibility, will be charged against the Contract Time, and the CM will be responsible for any and all expenses incurred. This provision is in addition to and supplemental to the applicable provisions of the Project's ROCIP Safety Manual.

6.11 Continuing the Work: CM shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Owner and CM may otherwise agree in writing.

6.12 CM's General Warranty and Guarantee:

6.12.1 CM warrants and guarantees to Owner that all Work will conform to the plans and specifications, be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective and that the whole and entire Work will function and operate as expressed or required by the Contract Documents. This warranty will survive the termination or expiration of the Contract. CM's warranty and guarantee hereunder excludes defects or damage caused by:

.1 abuse, modification or improper maintenance or operation by persons other than CM, Subcontractors or Suppliers; or

.2 normal wear and tear under normal usage.

Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section or the Contract Documents. Further, nothing in this warranty shall be limited by

the CM's obligation to cure defects within any specific corrective or warranty period as required in the Contract Documents, including Section 13.7 below.

6.12.2 CM's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CM's obligation to perform the Work in accordance with the Contract Documents:

.1 observations by Owner's Representative, Owner's CIT Consultant, and/or A/E;

.2 recommendation of any progress or final payment by Owner's Representative;

.3 the issuance of a certificate of Substantial Completion or any payment by Owner to CM under the Contract Documents;

.4 use or occupancy of the Work or any part thereof by Owner;

.5 any acceptance by OWNER or any failure to do so;

.6 any review of a Shop Drawing or sample submittal;

.7 any inspection, test or approval by others; or

.8 any correction of defective Work by Owner.

6.13 INDEMNIFICATION:

6.13.1 CM shall defend, indemnify and hold harmless Owner, A/E, A/E'S Consultants and Subconsultants and their respective officers, directors, partners, employees, agents and other Consultants and any of them (the "INDEMNIFIED PARTIES") from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage:

.1 Is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, and

.2 Is caused in whole or in part by any negligent act or omission of CM, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of the INDEMNIFIED PARTIES hereunder or whether liability is imposed upon such INDEMNIFIED PARTY by laws and regulations regardless of the negligence of any such person or entity.

In the event that indemnification of the INDEMNIFIED PARTIES is prohibited by law, CM shall nonetheless be solely responsible for any liability arising our of or resulting from the performance of the Work, subject to the limitations set forth above, and shall indemnify and hold harmless the remaining INDEMNIFIED PARTIES, who may be legally indemnified, from such liability of the CM and the associated costs described above.

6.13.2 The indemnification obligation under Section 6.14.1 shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for CM or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.13.3 The obligations of CM under Section 6.14.1 shall not extend to the liability of OWNER, A/E, A/E's consultants, and their officers, directors, partners, employees or agents caused primarily by negligent preparation of maps, drawings, surveys, designs or specifications upon which is placed the applicable state-authorized design professional seal of Owner's, A/E's or A/E's consultant's officers, directors, partners, employees or agents.

6.13.4 In the event CM fails to follow Owner's directives concerning use of the site, scheduling or course of construction, or engages in other conduct which proximately causes damage to property based on inverse condemnation or otherwise, then and in that event, CM shall indemnify Owner against all costs resulting from such claims.

6.13.5 As part of its indemnity obligations under Section 6.14.1, but subject to the limitation as set out in Section 6.14.3, in the event CM's negligence or breach of contract causes delay in the progress of the work or the performance of services being done by others on the Site or otherwise with regard to the Project (including Owner's separate contractors, design professionals, and consultants) so as to cause loss for which OWNER becomes liable to such others, then CM shall indemnify OWNER from and reimburse OWNER for such loss.

6.14 Survival of Obligations: All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

6.15 Losses from Natural Causes: Unless otherwise specified, all loss or damage to CM arising out of the nature of the Work to be done or from action of the elements, floods or from unforeseeable circumstances in prosecution of the Work or from unusual obstructions or difficulties which may be encountered in prosecution of the Work, shall be sustained and borne by CM at its own cost and expense.

6.16 Notice of Claim: Should CM suffer injury or damage to person or property because of any error, omission or act of Owner or of any of Owner's employees or agents or others for whose acts Owner is liable, a Claim must be made to the other party within thirty (30) calendar days of the event giving rise to such injury or damage. The provisions of this Section 6.17 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

6.17 Liquidated Damages: CM or its Surety shall be liable for liquidated damages as provided in the Agreement for the failure of the CM to timely complete the Work or any portion thereof within the Contract Time Requirements.

ARTICLE 7 - OTHER WORK

7.1 Owner may perform other work related to the Project at the site by Owner's own forces, or let other contracts therefor, or have other work performed by utility owners. CM and Owner agree to and shall use best efforts to cooperate and coordinate the Work with others performing work and other work related to the Project in order to avoid conflicts

and delays in the Work. If CM believes that delay or additional cost is involved because of such action by Owner, CM may make a Claim as provided in Article 11 or 12.

7.2 CM shall afford other contractors who are in a contract with Owner and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CM shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CM shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner's Representative and the other contractors whose work will be affected. CM shall promptly remedy damage wrongfully caused by CM to completed or partially completed construction or to property of the Owner or separate contractors.

7.3 If the proper execution or results of any part of CM's Work depends upon work performed by others under this Article 7, CM shall inspect such other work and promptly report to Owner's Representative in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CM's Work. CM's failure to report will constitute an acceptance of such other work as fit and proper for integration with CM's Work except for latent or non-apparent defects and deficiencies in such other work.

7.4 Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of CM, who shall cooperate with them. CM shall participate with other separate contractors and Owner's Representative in reviewing their construction Progress Schedules when directed to do so. On the basis of such review, CM shall make any revisions to the construction Progress Schedule deemed necessary after a joint review and mutual agreement. The agreed upon construction Progress Schedules shall then constitute the Progress Schedules to be used by CM, separate contractors and Owner until subsequently revised.

7.5 CM shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, CM agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption

7.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 Prior to the start of construction, Owner will designate in writing a person or entity to act as Owner's Representative during construction. Except as otherwise provided in these General Conditions, Owner shall issue all communications to CM through Owner's Representative. Owner's Representative will be responsible for providing Owner–supplied information and approvals in a timely manner to permit CM to fulfill its obligations under the Contract Document. Owner's Representative will also provide CM with prompt notice if it observes a failure on the part of the CM to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

8.2 Owner will not supervise, direct, control or have authority over or be responsible for CM's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of CM to comply with laws and regulations applicable to furnishing or performing

the Work. Owner is not responsible for CM's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of Owner to discover, or object to or condemn any defective Work or material shall not release CM from the obligation to properly and fully perform the Contract.

8.3 Owner is not responsible for the acts or omissions of CM, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work. CM acknowledges and agrees that Owner's direction to perform Work in accordance with the approved Progress Schedule is not a demand for acceleration or a dictation of CM's means or methods.

8.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work. The Owner shall have a reasonable amount of time to investigate site conditions, review submittals, analyze requests for changes, and to make other decisions in the orderly administration of the Contract. CM must notify the Owner in writing, if the time for the investigation, review, analysis of any submittals, required for changes or otherwise required for Owner's decision, impacts in any way the Critical Path of the approved Progress Schedule.

8.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 4 (Availability of Lands; Subsurface and Physical Conditions; Reference Points), Article 7 (Other Work) and Article 14 (Payments to CM and Completion).

8.6 **Notice of Claim:** Should Owner suffer injury or damage to person or property because of any error, omission or act of CM or of any of CM's employees or agents or others for whose acts CM is liable, a Claim will be made to the CM within thirty (30) calendar days after City has actual knowledge of such injury or damage. The provisions of this Section 8.6 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

8.7 Owner shall, throughout the performance of the Work, cooperate with CM and perform its responsibilities, obligations and services in a timely manner to facilitate CM's timely and efficient performance of the Work and so as not to delay or interfere with CM's performance of its obligations under the Contract Documents.

8.8 Furnishing of Services and Information

8.8.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for CM's information and use the following, all of which CM is entitled to reasonably rely upon in performing the Work:

.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

.2 To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable CM to perform the Work;

.4 A legal description of the Site;

.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

ARTICLE 9 - A/E'S STATUS DURING CONSTRUCTION

9.1 A/E's Authority and Responsibilities:

9.1.1 The duties and responsibilities and the limitations of authority of A/E during construction, as set forth in the Contract Documents, may be assigned or assumed by the OWNER, but shall not be extended without written consent of Owner and/or A/E. The assignment of any authority, duties or responsibilities to A/E under the Contract Documents, or under any agreement between Owner and A/E, or any undertaking, exercise or performance thereof by A/E, is intended to be for the sole and exclusive benefit of Owner and not for the benefit of CM, Subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.

9.1.2 A/E will not supervise, direct, control or have authority over or be responsible for CM's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. A/E is not responsible for any failure of CM to comply with laws and regulations applicable to the furnishing or performing the Work. A/E is not responsible for CM's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of A/E to discover, or object to or condemn any defective Work or material shall not release CM from the obligation to properly and fully perform the Contract.

9.1.3 A/E is not responsible for the acts or omissions of CM, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.1.4 If Owner and A/E agree, A/E will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Article 14, but only to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

9.1.5 The limitations upon authority and responsibility set forth in this Section 9.1 shall also apply to A/E's Consultants, Resident Project Representative and assistants.

9.2 [Intentionally omitted.]

9.3 **Visits to Site:** If Owner and A/E agree, A/E will make visits to the site at intervals appropriate to the various stages of construction as A/E deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CM's executed Work. Based on information obtained during such visits and observations, A/E will endeavor for the benefit of Owner to determine, in general, if the Work is proceeding in accordance with the Contract Documents. A/E will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. A/E's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, A/E will keep Owner informed of the progress of the Work and will

endeavor to guard Owner against defective Work. A/E's visits and on-site observations are subject to all the limitations on A/E's authority and responsibility set forth in Section 9.1.

9.4 Resident Project Representative: If Owner and A/E agree, A/E will furnish a Resident Project Representative to assist A/E in providing more continuous observation of the Work. The responsibilities and authority and limitations of any such Resident Project Representative and assistants will be as provided in Section 9.1 and in the Supplemental General Conditions. Owner may designate another representative or agent to represent OWNER at the site who is not A/E, A/E's consultant, agent or employee.

9.5 Clarifications and Interpretations: A/E may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness by Owner's Representative and will be binding on OWNER and CM. If Owner or CM believes that a written clarification or interpretation justifies an adjustment in the Contract Amount or the Contract Time Requirements, OWNER or CM may make a Claim therefor as provided in Article 11 or 12.

9.6 Rejecting Defective Work: A/E will recommend that Owner disapprove or reject Work which A/E believes to be defective, or believes will not produce a completed Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

9.7 Shop Drawings: Refer to Division 1 for A/E's authority concerning Shop Drawings.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Changes:

10.1.1 Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions or revisions in the Work. Such changes in the Work will be authorized by Change Order, Change Directive or Field Order. In the event that the Owner and the CM are unable to negotiate the terms of a Change Order for the performance of additional Work, the Owner may, at its election, perform such additional Work with its own forces or with another contractor and such work will be considered "Other Work" in accordance with Article 7.

10.1.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and CM shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or Field Order. CM's proposals for changes in the Contract Amount and/or Contract Time Requirements shall be submitted within ten (10) Calendar Days of request by Owner's Representative, including impacts to the approved Progress Schedule, unless Owner's Representative grants an extension. Owner will review each proposal and respond to CM within ten (10) Calendar Days. After review by OWNER, CM shall provide any supporting data requested by Owner's Representative within seven (7) Calendar Days, unless Owner's Representative grants an extension. Owner will determine within seven (7) Calendar Days whether to pursue the change in Work.

10.1.3 CM shall not be entitled to an increase in the Contract Amount or an extension of the Contract Time Requirements with respect to any Work performed that is not required by the Contract Documents as amended, modified and

supplemented as provided in Sections 3.3.1 and 3.3.2, except in the case of an emergency as provided in Section 6.11.5 or in the case of uncovering Work as provided in Section 13.4.

10.1.4 Except in the case of an emergency as provided in Section 6.11.5, a Change Order or Change Directive is required before CM commences any activities associated with a change in the Work which, in CM's opinion, will result in a change in the Contract Amount and/or Contract Time Requirements.

10.1.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Amount or Contract Time Requirements) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CM's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.2 Change Orders:

10.2.1 Owner and CM shall execute appropriate written Change Orders covering:

.1 a change in the Work;

.2 the amount of the adjustment in the Contract Amount, if any; and

.3 the extent of the adjustment in the Contract Time Requirements, if any.

10.2.2 An executed Change Order shall represent the complete, equitable, and final amount of adjustment in the Contract Amount and/or Contract Time Requirements owed to CM or Owner as a result of the occurrence or event causing the change in the Work encompassed by the Change Order.

10.3 Change Directives:

10.3.1 Without invalidating the Contract, Owner may, by written Change Directive, using the Force Account method, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time Requirements being adjusted as necessary. “Force Account” means a basis of payment for the direct performance of Work with payment based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 11.5, below. A Change Directive shall be used in the absence of complete and prompt agreement on the terms of a Change Order. Where practicable, any items of Work that may be agreed upon, prior to the performance of Work under this Section, will be included in a separate Change Order. For example, the cost of the installation of additional asphalt may be agreed upon based on the unit prices in the Bid.

10.3.2 If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on the method provided in Section 11.5.

10.3.3 A Change Directive shall be effective immediately and shall be recorded later by preparation and execution of an appropriate Change Order.

10.3.4 Upon receipt of a Change Directive, CM shall promptly proceed with the change in the Work involved, provided, prior to the commencement of any Work under this section, the CM must submit its proposed Work plan, anticipated schedule, and a list of its work force and equipment proposed to be used in the Work for Owner’s approval. Upon such approval, CM must promptly commence and make continuous progress in the Work. The Owner reserves the right to withhold payment for low production or lack of progress.

10.4 Field Order:

10.4.1 Owner's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or the Contract Time Requirements and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These shall be accomplished by written Field Order and shall be binding on Owner and on CM who shall perform the Work involved promptly.

10.4.2 If CM believes that a Field Order would require an adjustment in the Contract Amount and/or Contract Time Requirements, CM shall make a prompt written request to Owner's Representative for a Change Order. Any request by CM for an adjustment in Contract Amount and/or Contract Time Requirements must be made in writing prior to beginning the work covered by the Field Order.

10.5 **No Damages for Delay:** CM shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to CM is caused by failure of Owner to provide information or material, if any, which is to be furnished by Owner or access to the Work and only to the extent that such acts continue after the CM furnishes Owner with written notice of such failure. When such extra compensation is claimed a written statement thereof shall be presented by CM to Owner and if by Owner found correct shall be approved. If delay is caused by specific orders given by Owner to stop work or by performance of extra Work or by failure of Owner to provide material or necessary instructions for carrying on the Work, then such delay will entitle CM to an equivalent extension of time, CM's application for which shall, however, be subject to approval of Owner. No such extension of time shall release CM or surety on its performance bond from all CM's obligations hereunder which shall remain in full force until discharge of the Contract. In no event shall the CM be entitled to any compensation or recovery of any special damages in connection with any delays, including without limitation: consequential damages, lost opportunity costs, impact damages, or other similar damages. The Owner's exercise of any of its rights or remedies under the Contract Documents (including without limitation ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference in the CM'S performance of the Work. Except as otherwise provided herein, an extension of the Contract Time Requirements, to the extent permitted under Article 12, shall be the sole remedy of the CM for any acknowledged delays.

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

11.1 The Contract Amount is stated in the Agreement and, including authorized adjustments, is the total amount payable by Owner to CM for performance of the Work under the Contract Documents.

11.2 The original Contract Amount may not be increased by more than twenty-five percent (25%) and it may not be decreased more than twenty-five percent (25%) without the consent of the CM to such decrease, except in the event of a termination for convenience under Section 15.2 or the failure of the City Council to appropriate sufficient funding for the Project, in which events it is agreed that the consent of the CM will not be required.

11.3 The Contract Amount shall only be changed by a Change Order. Any claim for an adjustment in the Contract Amount shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with

supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled as a result of said occurrence or event. If Owner and CM cannot otherwise agree, all Claims for adjustment in the Contract Amount shall be determined as set out in Article 16.

11.4 Determination of Value of Work:

11.4.1 The value of any Work covered by a Change Order for an adjustment in the Contract Amount will be determined by one or more of the following methods:

.1 by application of unit prices contained in the Contract Documents to the quantities of the items involved.

.2 by a mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

.3 by cost of Work plus CM's fee for all overhead costs and profit (determined as provided in Section 11.5).

.4 No cost will be included in the change order for time spent preparing the change order, nor will costs be included for an estimate of time to negotiate the change order costs for machinery, tools, or equipment as described in Subsection 11.5.3

11.4.2 Before using the method described in Section 11.4.1.3, Owner and CM agree to negotiate a Change Order using the methods identified in Sections 11.4.1.1 and 11.4.1.2, as appropriate, to determine the adjustment in the Contract Amount.

11.5 Cost of Work: If neither of the methods defined in Sections 11.4.1.1 nor 11.4.1.2 can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by Change Directive, using the Force Account method, and payment will be made as follows:

11.5.1 For all personnel, CM will be entitled to reimbursement for wages or salaries and employee benefit costs for extra Work performed at such rates as authorized for Cost of the Work under Sections 7.3.1.1 through 7.3.1.3 of the Agreement. No charge for superintendence will be made unless considered necessary and ordered by Owner.

11.5.2 CM will receive the actual cost, including freight charges, of the materials used and installed on such Work. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount.

11.5.3 For machinery, trucks, power tools, or other similar equipment (the “equipment”) agreed to be necessary by OWNER and CM, CM shall be entitled to reimbursement at such rates as authorized under Section 7.3.1.7 of the Agreement with regard to such types of costs. The established equipment rates will be paid for each hour that the equipment is utilized in the Work. In the event that the equipment is used intermittently during the Work, full payment for an eight-hour day will be made if the equipment is not idle more than four (4) hours of the day. If the equipment is idle more than four (4) hours in a day, then payment will be made only for the actual hours worked.

11.5.4 The actual cost of CM's bond(s) on the extra Work will be paid based on invoices from surety.

11.5.5 CM shall be entitled to reimbursement for actual, direct General Conditions Costs reasonably and necessarily incurred by CM in the performance of the extra Work.

11.5.6 The compensation, as herein provided for, shall be received by CM and any affected Subcontractor as payment in full for work done by Change Directive and will include use of small tools, and total overhead expense and profit. CM shall maintain a documented, itemized accounting, evidencing the expenses and savings, including overhead and profit, associated with such changes, both as an expense and savings, in the performance of the Work resulting from the change. CM and Owner's Representative shall compare records of work done by Change Directive at the end of each day. Copies of these records will be made upon forms provided for this purpose by Owner and signed by both Owner's Representative and CM, with one copy being retained by Owner and one by CM. Refusal by CM to sign these records within two (2) working days of presentation does not invalidate the accuracy of the record.

11.5.7 CM shall not be entitled to additional markup for indirect overhead or for profit except to the extent CM is entitled to an increase in the CM's Fee in accordance with Section 7.2.2 of the Agreement.

11.6 Unit Price Work:

11.6.1 Where the Contract Documents provide that all or part of the Work is to be unit price Work, initially the Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Bid. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Amount. Determinations of the actual quantities and classifications of unit price work performed by CM will be made by Owner's Representative. Owner's Representative will review with CM the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

11.6.2 When "plan quantity" is indicated for a Bid item, CM shall be paid amount specified in the Contract Documents without any measurements.

11.6.3 Each unit price will be deemed to include an amount considered by CM to be adequate to cover CM's overhead and profit for each separately identified item.

11.6.4 A Major Item is any individual Bid item in the Bid that has a total cost equal to or greater than five percent (5%) of the original Contract Amount or $50,000, whichever is greater, computed on the basis of Bid quantities and Contract unit prices.

11.6.5 Owner or CM may make a Claim for an adjustment in the Contract Amount in accordance with Article 11 if:

.1 the actual quantity of any Major Item should become as much as twenty percent (20%) more than or twenty percent (20%) less than that in the Bid; or

.2 CM presents documentation contesting accuracy of "plan quantity" and Owner's Representative verifies quantity and determines original value is in error by five percent (5%) or more;

Provided, however, in the event a Major Item is reduced by twenty percent (20%) or more of the amount in the Bid, no additional Article 11 profit or overhead will be added, if, due to other additions in the Work, the net value of the Contract Amount is not reduced.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1 Requisites for Changes in Contract Time Requirements:

12.1.1 The Contract Time Requirements (including Milestones) may only be changed by Change Order or Modification duly executed by both CM and Owner's Representative. Any claim for an adjustment of the Contract Time Requirements (including Milestones) shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days after the start of the occurrence or event giving rise to the delay) and stating the general nature of the delay. Notice of the extent of the delay with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed is the entire adjustment to which claimant is entitled as a result of said occurrence or event. If Owner and CM cannot otherwise agree, all Claims for adjustment in the Contract Time Requirements (including Milestones) shall be determined as set out in Article 16. No Claim for an adjustment in the Contract Time Requirements (including Milestones) will be valid if not submitted in accordance with the requirements of this Article.

12.1.2 When CM is at fault and Owner stops the Work, so that corrections in the Work can be made by CM, no extension in time will be allowed.

12.1.3 When CM is prevented from completing any part of the Work within the Contract Time Requirements (including Milestones) due to delay beyond the control of both Owner and CM, an extension of the Contract Time Requirements (including Milestones) in an amount equal to the time lost due to such delay shall be CM's sole and exclusive remedy for such delay. If performance by the CM or Owner is interrupted by any occurrence not occasioned by its own conduct, whether such occurrence be an act of god or the result of war, riot, civil commotion, sovereign conduct, or the conduct of a third party, then such performance will be excused for a period of time necessary to remedy its effects, provided, however, in such an event, a conference will be held within three (3) business days to establish a proposed new Progress Schedule for the Project.

12.1.4 Owner will consider time extension requests and may grant CM an extension of time because of:

.1 Changes ordered in the work which justify additional time.

.2 Failure of materials or products being at the Project site due to delays in transportation or failures of Suppliers, which are not the result of CM's, Subcontractor's or Supplier's negligence. The request for an extension of time shall be supported by a citation of acts demonstrating that the delays are beyond CM's control, including, but not limited to, CM's efforts to overcome such delays documented as follows:

a) Copy of purchase order for delayed item(s) indicating date ordered by CM/ Subcontractor and date purchase order received by Supplier.

b) If item(s) require Shop Drawings or other submittal information in accordance with the Contract Documents, provide record of date submittal(s) forwarded to Owner's Representative, date submittal(s) returned to CM, and date submittal(s) forwarded to Supplier.

c) Copy of document(s) from Supplier, on Supplier's letterhead, indicating date(s) item(s) would be ready for shipment and/or actual shipment date(s).

d) Copies of all correspondence between CM / Subcontractor and Supplier indicating CM / Subcontractor's efforts to expedite item(s).

e) If item(s) are being purchased by a Subcontractor, provide correspondence, meeting notes, etc., that reflect CM's efforts with the Subcontractor to expedite delivery of the item(s).

.3 When acts of Owner, A/E, Owner's CIT Consultant, utility owners or other contractors employed by OWNER delay progress of work through no fault of CM. The CM will only be entitled to an extension of time for delays that affect the Critical Path of the Work and that are not caused by the CM.

.4 When CM is delayed by strikes, lockouts, fires, losses from natural causes, or other unavoidable cause or causes beyond CM's control.

12.2 Weather Delays:

12.2.1 CM may be granted an extension of time because of unusual inclement weather, including but not limited to unusual rainfall events, which are beyond the normal rainfall recorded and expected for Austin, Texas. However, the CM will not be granted an extension of time for "normal rainfall", as described below.

12.2.2 "Unusual Inclement Weather" is defined as a rain event or other weather related event which occurs at the site and is of sufficient magnitude to prevent CM from performing units of Work critical to maintaining the Progress Schedule.

12.2.3 Baseline Rain Day Determination. "Normal rainfall" compiled by the State climatologist, based on U.S. Weather Bureau Records for Austin, Texas, is considered a part of the Calendar Day Contract, and is not a justification for an extension of time. Listed below are the number of days in each month for which no compensatory days for rainfall events ("Rain Days") in such months may be claimed:

January.....	8 days
February.....	8 days
March.....	7 days
April.....	7 days
May.....	9 days
June.....	6 days
July.....	5 days
August.....	5 days
September.....	7 days
October.....	7 days
November.....	7 days
December.....	7 days

Rain Days in addition to the baseline Rain Day determination described above will be measured with the Owner's Representative's approval at the nearest operational public weather data collection facility to the site, including but not limited to the Owner's early warning flood gauge system.

12.2.4 CM may receive credit in any month for Unusual Inclement Weather, and specifically for any Rain Days in that month which exceed the number of Rain Days allocated to that month, if a Claim is made in accordance with Section 12.1.1 and the weather event meets the definition for "Unusual Inclement Weather", and as applicable, "Rain Day" and such claimed day is a day on

which Work critical to maintaining the Progress Schedule is scheduled to be performed and is otherwise capable of being performed.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.1 Notice of Defects: Prompt notice of all defective Work of which Owner, Owner's CIT Consultant, or A/E has actual knowledge will be given to CM. All defective Work may be rejected, corrected or accepted as provided in Article 13. CM must give Owner and A/E prompt notice of any defective Work of which CM has actual knowledge.

13.2 Access to Work: Owner, Owner's CIT Consultant, A/E, A/E's Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies having jurisdiction will have access to the Work at reasonable times for observing, inspecting and testing. CM shall provide them proper and safe conditions for such access, and advise them of CM's site safety procedures and programs so that they may comply therewith as applicable.

13.3 Tests and Inspections:

13.3.1 CM shall give timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.3.2 Owner shall employ and pay for services of an independent testing laboratory to perform all inspections, tests or approvals required by the Contract Documents except:

.1 for inspections, tests or approvals covered by Section 13.3.3 below;

.2 that costs incurred with tests or inspections conducted pursuant to Section 13.4.3 below shall be paid as provided in Section 13.4.3;

.3 for reinspecting or retesting defective Work, including any associated costs incurred by the testing laboratory for cancelled tests or standby time; and

.4 as otherwise specifically provided in the Contract Documents. All testing laboratories shall meet the requirements of ASTM E-329.

13.3.3 If laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CM shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish Owner's Representative the required certificates of inspection or approval. CM shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Owner's CIT Consultant's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to CM'S purchase thereof for incorporation in the Work.

13.3.4 CM shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for Owner's and A/E's review of submittals covering materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to CM's purchase thereof for incorporation in the Work.

13.4 Uncovering Work:

13.4.1 If any Work (or the work of others) that is to be inspected, tested or approved is covered by CM without written concurrence of Owner's Representative, or if any Work is covered contrary to the written request of Owner's Representative, it must, if requested by Owner's Representative, be uncovered and recovered at CM's expense.

13.4.2 Uncovering Work as provided in Section 13.4.1 shall be at CM's expense unless CM has given Owner's Representative timely notice of CM's intention to cover the same and Owner's Representative has not acted within five (5) working days to such notice.

13.4.3 If Owner's Representative considers it necessary or advisable that covered Work be observed, inspected or tested, CM shall uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CM shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Amount, and may make a Claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CM shall be allowed an increase in the Contract Amount or an extension of the Contract Time Requirements (including Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and CM may make a Claim therefor as provided in Articles 11 and 12.

13.5 Owner May Stop the Work:

13.5.1 If the Work is defective, or CM fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CM to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CM or any surety or other party.

13.5.2 If CM fails to correct defective Work or submit a satisfactory plan to take corrective action, with procedure and time schedule, Owner may order CM to stop the Work, or any portion thereof, until cause for such order has been eliminated, or take any other action permitted by this Contract. A notice to stop the Work, based on defects, shall not stop calendar or working days charged to the Project.

13.6 Correction or Removal of Defective Work: If required by Owner, CM shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner's Representative, remove it from the site and replace it with Work that is not defective. CM shall correct or remove and replace defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of defective Work. CM shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.7 Express Warranty (Corrective) period:

13.7.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of

any applicable special guarantee or express warranty required by the Contract Documents or by any specific provision of the Contract Documents (e.g. Section 14.11.2), any Work, including work performed after the Substantial Completion date, is found to be defective, CM shall promptly, without cost to Owner and in accordance with Owner's written instructions:

(i) correct such defective Work, or, if it has been rejected by Owner, remove it from the site and replace it with Work that is not defective, and

(ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

If CM does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CM. The warranty (corrective) period will be deemed to be renewed and recommenced in connection with the completed items of Work requiring correction.

13.7.2 In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the warranty (corrective) period for that item may start to run from an earlier date if so provided in the Contract Documents.

13.7.3 If correction of defective Work will affect the function or use of the facility CM shall not proceed with correction of defective Work without prior coordination and approval of Owner.

13.7.4 The obligations of the CM to perform warranty (corrective) work will survive the acceptance of the Work and any termination of the Contract.

13.7.5 Owner will utilize the "Warranty Item Form" a copy of which is attached hereto for the purpose of providing written notice of warranty defects. CM will acknowledge receipt of the notice by dating, signing, completing and returning the form to Owner when the defect is corrected, including such information on or attached to the form to describe the nature of the repairs or corrections that were made. If the defect cannot be corrected within seven (7) Calendar Days of receipt of notice, CM shall promptly provide a written explanation to Owner's Representative describing the repairs needed and the time required to complete the repairs.

13.7.6 Establishment of the required period for correction of Work as described in Subsection 13.7.1 above relates only to the specific obligation of the CM to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CM's liability with respect to the CM's obligations, other than specifically to correct the nonconforming or defective Work that was discovered during the applicable corrective period established herein.

13.8 Acceptance of Defective Work: If, instead of requiring correction or removal and replacement of defective Work, Owner decides to accept it, Owner may do so. CM shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the diminished value of the defective Work. If the acceptance occurs after such

recommendation, an appropriate amount will be paid by CM to Owner after a calculation by OWNER of the diminution in value of the defective Work.

13.9 Owner May Correct Defective Work: If CM fails within a reasonable time after Written Notice of Owner to correct defective Work, or to remove and replace rejected Work, or if CM fails to perform the Work in accordance with the Contract Documents, or if CM fails to comply with any other provision of the Contract Documents, Owner may, after seven (7) calendar days' Written Notice to CM, correct and remedy any such deficiency. If, in the opinion of the Owner's Representative, significant progress has not been made during this seven (7) calendar day period to correct the deficiency, the Owner may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude CM from all or part of the site, take possession of all or part of the Work, and suspend CM's services related thereto, and incorporate in the Work all materials and equipment stored at the site or for which Owner has paid CM but which are stored elsewhere. CM shall allow Owner, its agents and employees, Owner's other contractors, A/E and A/E's consultants access to the site to enable Owner to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by Owner in exercising such rights and remedies will be charged against CM and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CM's defective Work. CM shall not be allowed an extension of the Contract Time Requirements (including Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CM AND COMPLETION

14.1 Application for Progress Payment:

14.1.1 No more often than once a month, CM shall submit to Owner's Representative for review an Application for Payment, in a form acceptable to Owner, filled out and signed by CM covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. The Application for Payment shall constitute CM's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon CM's receipt of payment, whichever occurs earlier. Notwithstanding anything to the contrary in the Contract Documents, OWNER shall pay CM all undisputed amounts in an Application for Payment within the times required by the Agreement.

14.1.2 Such applications shall not include requests for payment on account of changes in the Work which have been properly authorized by Change Directives but not yet included in Change Orders.

14.1.3 Such applications shall not include requests for payment of amounts the CM does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason.

14.1.4 If payment is requested on the basis of materials or equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall be

accompanied by such bills of sale, data and other procedures satisfactory to Owner substantiating Owner's title to such materials or equipment or otherwise protecting Owner's interest. Payment on account of such materials or equipment will not include any amount for CM's overhead or profit or relieve CM of its obligation to protect and install such materials or equipment in accordance with the requirements of the Contract and to restore damaged or defective Work. If materials or equipment are stored at another location, at the direction of the Owner they shall be stored in a bonded and insured facility, accessible to A/E, CIT Consultant, and Owner, and shall be clearly marked as property of Owner. Title to materials delivered to the site of the Work or a staging area will pass to OWNER upon payment by Owner without the necessity for further documentation. Risk of loss will not pass to Owner until acceptance.

14.1.5 Owner will pay CM total amount of approved Application for Payment, less five percent (5%) of amount thereof, which five percent (5%) will be retained until final payment, less all previous payments and less all other sums that may be retained by Owner under the terms of this Agreement. If the Work is near completion and delay occurs due to no fault or neglect of CM, Owner may pay a portion of the retained amount to CM. CM, at Owner's option, may be relieved of the obligation to complete the Work and, thereupon, CM shall receive payment of the balance due under the Contract subject to the conditions stated under Section 15.2.

14.1.6 Applications for Payment shall include the following documentation:

.1 updated Progress Schedule;

.2 monthly subcontractor report;

.3 any other documentation required under the Supplemental General Conditions.

14.2 CM's Warranty of Title: CM warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner free and clear of all Liens no later than the time of payment to CM.

14.3 Review of Applications for Progress Payment:

14.3.1 Owner's Representative will, within seven (7) calendar days after receipt of each Application for Payment, either indicate a recommendation for payment and forward the Application for processing by Owner, or return the Application to CM indicating Owner's Representative's reasons for refusing to recommend payment. In the latter case, CM shall make the necessary corrections and resubmit the Application.

14.3.2 Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative, based upon Owner's Representative's on-site observations of the executed Work and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:

.1 the Work has progressed to the point indicated; and

.2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of

quantities and classifications for unit price Work, and to any other qualifications stated in the recommendation).

14.3.3 By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:

.1 exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work;

.2 examination has been made to ascertain how or for what purpose CM has used money previously paid on account of the Contract Amount;

.3 CM's construction means, methods, techniques, sequences or procedures have been reviewed; or

.4 that there may not be other matters or issues between the parties that might entitle CM to be paid additionally by Owner or entitle Owner to withhold payment to CM.

14.4 Decisions to Withhold Payment:

14.4.1 Owner may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

.1 defective Work not remedied;

.2 third party Claims filed or reasonable evidence indicating probable filing of such Claims;

.3 failure of CM to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;

.5 damage to Owner or another contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time Requirements, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 failure of CM to submit a schedule of values in accordance with the Contract Documents;

.8 failure of CM to submit a submittal schedule in accordance with the Contract Documents;

.9 failure of CM to submit and update a construction Progress Schedule in accordance with the Contract Documents;

.10 failure of CM to maintain a record of changes on drawings and documents;

.11 failure of CM to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of Owner;

.12 failure of CM to submit monthly subcontractor reports;

.13 CM's neglect or unsatisfactory prosecution of the Work, including failure to clean up;

.14 failure of CM to comply with the Austin City Code, Chapter 2-9-A, as amended, "Minority-Owned and Women-Owned Business Enterprise Procurement Program;"

.15 property damage claims that are the responsibility of the CM (per Section 00810CMR); or

.16 failure of CM to comply with any provision of the Contract Documents.

14.4.2 When the above reasons for withholding payment are removed, CM shall resubmit a statement for the value of Work performed. Payment will be made within thirty (30) calendar days of receipt of approved Application for Payment.

14.5 Delayed Payments: Should Owner fail to make payment to CM of sum named in any Application for Payment within thirty (30) calendar days after the day on which OWNER received the mutually acceptable Application for Payment, then Owner will pay to CM, in addition to sum shown as due by such Application for Payment, interest thereon at the rate specified in Government Code, Section 2251.025(b) from date due until fully paid, which shall fully liquidate any injury to CM growing out of such delay in payment.

14.6 Arrears: No money shall be paid by Owner upon any claim, debt, demand or account whatsoever, to any person, firm or corporation who is in arrears to City for taxes; and City shall be entitled to counterclaim and automatically offset against any such debt, claim, demand or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand or account after said taxes are due, shall affect the right of Owner to so offset said taxes, and associated penalties and interest if applicable, against the same.

14.7 Substantial Completion:

14.7.1 When the CM considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the CM shall notify Owner's Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify CM giving reasons therefor. After performing any required Work, CM shall then submit another request for Owner's Representative to determine Substantial Completion. If Owner's Representative considers the Work substantially complete, Owner's Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which CM shall finish the punch list, and shall establish responsibilities of the Owner and CM for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of CM to complete all Work in accordance with the Contract Documents. If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. The certificate of Substantial Completion shall be signed by Owner and CM to evidence acceptance of the responsibilities assigned to them in such certificate.

14.7.2 OWNER shall have the right to exclude CM from the Work after the date of Substantial Completion, but OWNER will allow CM reasonable access to complete or correct items on the punch list and complete warranty work.

14.8 Partial Utilization: Use by Owner, at Owner's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) Owner and CM agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with CM's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work in accordance with the following:

14.8.1 Owner at any time may request CM to permit Owner to use any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If CM agrees that such part of the Work is substantially complete, CM shall certify to Owner's Representative that such part of the Work is substantially complete and request Owner's Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. CM at any time may notify Owner's Representative that CM considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. The provisions of Sections 14.7.1 and 14.7.2 will apply with respect to notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted.

14.8.2 Such partial utilization is authorized by public authorities having jurisdiction over the Work.

14.9 Final Inspection: Upon Written Notice from CM that the entire Work or an agreed portion thereof is complete, Owner's Representative will make a final inspection with CM and provide Written Notice of all particulars in which this inspection reveals that the Work is incomplete or defective. CM shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. Owner's CIT Consultant and other third party consultants and any other governmental authority with jurisdiction over the Project may assist Owner in the inspection and testing of the Work and CM agrees to and shall cooperate with any such consultants or authorities with respect to any such inspections and tests.

14.10 Final Application for Payment: CM may make application for final payment following the procedure for progress payments after CM has completed all such corrections to the satisfaction of Owner's Representative and delivered the following documents:

14.10.1 Affidavit by CM certifying the payment of all debts and claims;

14.10.2 Three (3) complete operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents;

14.10.3 Record documents (as provided in Section 6.10);

14.10.4 Consent of surety, if any, to final payment. If surety is not provided, complete and legally effective releases or waivers (satisfactory to Owner) of all claims arising out of or filed in connection with the Work;

14.10.5 Certificate evidencing that insurance required by the Supplemental General Conditions will remain in force after final payment and through the warranty period;

14.10.6 Non-Use of Asbestos Affidavit (After Construction);

14.10.7 Subcontractor report and all other documentation necessary for evaluation of CM's fulfillment of the Contract MBE/WBE or DBE goals;

14.10.8 Documentation of notice to claimants, to the extent applicable and subject to Subsection 14.11.4; and

14.10.9 Any other documentation called for in the Contract Documents.

14.11 Final Payment and Acceptance:

14.11.1 If, on the basis of observation of the Work during construction, final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and CM's other obligations under the Contract Documents have been fulfilled and there are no outstanding claims, Owner's Representative will recommend the final Application for Payment and thereby notify the Owner, who will pay to CM the balance due CM under the terms of the Contract. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation, CM may execute a re-vegetation letter with fiscal posted (letter of credit) to ensure completion of this item. This Work must be accomplished within one hundred twenty (120) Calendar Days of the date of Final Completion of the Work. When the permanent erosion control has been established, Owner will initiate an inspection for final acceptance of the erosion controls. If the re-vegetation is not completed within the one hundred twenty (120) Calendar Days, Owner, at its option, may complete the Work using the posted fiscal.

14.11.2 If the Contract measures Contract Time to Final Completion, rather than Substantial Completion, Owner's Representative will issue a letter of final acceptance to CM which establishes the Final Completion date and initiates the one-year warranty period. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation and CM has executed a re-vegetation letter with fiscal posted (letter of credit) to ensure completion of this item, the Owner's Representative will issue a letter of conditional acceptance to CM which established the Final Completion date and initiates the one-year warranty period.

14.11.3 Final payment is considered to have taken place when CM or any of its representatives negotiates Owner's final payment check, whether labeled final or not, for cash or deposits check in any financial institution for its monetary return.

14.11.4 The Owner will withhold funds sufficient to cover the amount of any unresolved contract claims from final payment for six months under the following limited conditions:

.1 CM must provide written notice to the claimant (via certified mail or hand delivery) that (i) Owner will hold funds in the amount of the disputed claim for six (6) months from the date of the receipt of the notice and (ii) CM and the claimant have certain alternative dispute resolution rights; and

.2 CM must provide Owner with a copy of the receipted notice.

Provided the claimant has received notice under this section, Owner will release the withheld funds, if the CM provides a bond in substantial compliance with the provisions of Section 52.231 of the Texas Property Code; when the Owner receives a settlement or release of the claim with accompanying instructions regarding payment; upon resolution of the claim in litigation, if suit is filed within such six (6) month period and the Owner receives written notice of such filing; or when such six (6) month period has passed, if no such bond, settlement, release, or notice of filing of suit have been received. The above provisions notwithstanding, if efforts to timely resolve a disputed claim are not being made to Owner's reasonable satisfaction, Owner may, in its complete discretion, file an interpleader action and deposit the withheld funds in the registry of a court of competent jurisdiction. In addition, CM must include a provision in each of its subcontracts that the prevailing party in any

litigation arising thereunder will be entitled to recover its costs of court and reasonable attorney's fees.

14.12 Waiver of Claims: The making and acceptance of final payment will constitute:

14.12.1 a waiver of claims by Owner against CM, except claims arising from unsettled claims, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any warranty specified therein, or from CM's continuing obligations under the Contract Documents; and

14.12.2 a waiver of all claims by CM against Owner other than those previously made in writing and still unsettled.

14.13 CM'S Payment Obligations

CM will pay Subcontractors in accordance with the Texas Prompt Payment Act, the Texas Construction Trust Fund Act, and its contractual obligations to such parties, all the amounts CM has received from Owner on account of their work. CM will impose similar requirements on the Subcontractors to pay those parties with whom they have contracted. CM will indemnify and defend OWNER against any claims for payment and mechanic's liens.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 OWNER May Suspend Work Without Cause: At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by Written Notice to CM which will fix the date on which the Work will be resumed. CM shall resume the Work on the date so fixed. CM shall be allowed an adjustment in the Contract Amount or an extension of the Contract Time Requirements, or both, directly attributable to any such suspension if CM makes an approved Claim therefor as provided in Articles 11 and 12.

15.2 Owner May Terminate Without Cause: Upon seven (7) calendar days' Written Notice to CM, Owner may, without cause and without prejudice to any right or remedy of Owner, elect to terminate the Agreement. In such case, CM shall be paid (without duplication of any items):

15.2.1 for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;

15.2.2 for reasonable demobilization costs;

15.2.3 for anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on the entire Contract not previously paid, unabsorbed overhead, or lost opportunity; and

15.2.4 for all claims incurred in settlement of terminated contracts with Subcontractors, Suppliers and others, including for anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on the entire Contract not previously paid, unabsorbed overhead, or lost opportunity. CM agrees to negotiate in good faith with Subcontractors, Suppliers and others to mitigate Owner's cost.

15.3 Owner May Terminate With Cause:

15.3.1 Upon the occurrence of any one or more of the following events:

.1 if CM persistently fails to perform the Work in accordance with the Contract Documents;

.2 if CM disregards laws or regulations of any public body having jurisdiction;

.3 if CM disregards the authority of Owner's Representative;

.4 if CM makes fraudulent statements;

.5 if CM fails to maintain a work force adequate to accomplish the Work within the Contract Time Requirements;

.6 if CM fails to make adequate progress and endangers successful completion of the Contract; or

.7 if CM otherwise violates in any substantial way any provisions of the Contract Documents;

Owner may, after giving CM (and the surety, if any) seven (7) calendar days Written Notice terminate the services of CM. Owner, at its option, may proceed with negotiation with surety for completion of the Work. Alternatively, Owner may under these circumstances exclude CM from the site and take possession of the Work (without liability to CM for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which Owner has paid CM but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case CM shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds all claims, costs, losses and damages sustained by Owner arising out of or resulting from completing the Work, such excess will be paid to CM. If such claims, costs, losses and damage exceed such unpaid balance, CM or surety shall pay the difference to Owner. In the event that a termination for cause is found to be wrongful, the termination shall be converted to a termination without cause as set forth in Section 15.2 and CM's remedy for wrongful termination is limited to the recovery of the payments permitted for termination without cause as set forth in Section 15.2. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, CM will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from CM'S default.

15.3.2 Where CM's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CM and surety then existing or which may thereafter accrue. Any retention or payment of moneys due CM by Owner will not release CM from liability. In the event Owner terminates Contract with cause, Owner may reject any and all Bids submitted by CM for up to three (3) years. In addition, in the event of a termination for cause, CM and its principals shall not submit any further Bids to Owner for three (3) years after the date of such termination.

15.4 CM May Stop Work or Terminate: If through no act or fault of CM, the Work is suspended for a period of more than ninety (90) calendar days by Owner or under an order of court or other public authority, or (except during disputes) Owner's Representative fails to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) Owner fails for sixty (60) calendar days after it is submitted to pay CM any

sum finally determined by Owner to be due, then CM may, upon seven (7) calendar days' Written Notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in Section 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if (except during disputes) Owner's Representative has failed to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) Owner has failed for sixty (60) calendar days after it is submitted to pay CM any sum finally determined by Owner to be due, CM may upon seven (7) calendar days' Written Notice to Owner stop the Work until payment of all such amounts due CM, including interest thereon. The provisions of this Section 15.4 are not intended to preclude CM from making a Claim under Articles 11 and 12 for an increase in Contract Amount or Contract Time Requirements or otherwise for expenses or damage directly attributable to CM's stopping Work as permitted by this Section.

15.5 Discretionary Notice to Cure: In its complete discretion, Owner may, but is not required to, provide a Notice to Cure to CM and its surety to cure an event of default described above and/or an anticipatory breach of contract and, if required by Owner, to attend a meeting with Owner, regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, CM shall prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The CM'S report must be delivered to Owner at least three (3) days prior to any requested meeting with the Owner and surety.

15.6 Bankruptcy: If CM declares bankruptcy or is adjudged bankrupt or makes an assignment for the benefit of creditors or if a receiver is appointed for the benefit of creditors or if a receiver is appointed by reason of CM's insolvency, CM may be unable to perform this Contract in accordance with the Contract requirements. In such an event, Owner may demand CM or its successor in interest provide Owner with adequate assurance of CM'S future performance in accordance with the terms and conditions of the Contract. If CM fails to provide adequate assurance of future performance to Owner's reasonable satisfaction within ten (10) days of such a request, Owner may terminate the CM'S services for cause or without cause, as set forth above. If CM fails to provide timely adequate assurance of its performance and actual performance, Owner may prosecute the Work with its own forces or with other contractors on a time and material or other appropriate basis and the cost of which will be charged against the Contract balance.

15.7 Duty to Mitigate: In the event of any termination or suspension under this Contract, the CM agrees to and shall take all reasonable actions to mitigate its damages and any and all claims which may be asserted against the Owner.

15.8 Responsibility during Demobilization: While demobilizing, the CM will take all necessary and reasonable actions to preserve and protect the Work, the site and other property of the OWNER or others at the site.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 Filing of Claims:

16.1.1 Claims arising from the circumstances identified in Sections 3.2, 4.1, 4.2.2, 4.2.4, 6.4.2, 6.11.5.2, 6.17, 7.5, 8.6, 9.5, 10.4.2, 13.4.3, 13.8, 13.9, 15.1, 15.2, 15.3, or 15.4, or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within thirty

(30) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after Written Notice of Claim is delivered by claimant and shall represent that the adjustment claimed covers all known amounts and/or extensions of time to which claimant is entitled.

16.1.2 Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, Owner's Representative and CM shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to: (i) submit additional supporting data requested by the other party; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

16.2 Alternative Dispute Resolution:

16.2.1 If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies. Owner reserves the right to include the A/E or the CIT Consultant as a party.

16.2.2 Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) Calendar Days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously involved senior level decision maker is unavailable due to the size of the CM's organization or any other reason, the CM shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations shall be concluded within thirty (30) Calendar Days of the first meeting, unless mutually agreed otherwise. This step may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

16.2.3 Mediation:

.1 If the procedure described in 16.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. Owner and CM agree to select within thirty (30) calendar days a mediator trained in mediation skills, to assist with resolution of the dispute. Owner and CM agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to ask the Travis County Dispute Resolution Center to select a qualified individual, which selection shall be binding on the parties.

.2 Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all parties for the exchange of points of view and (iii) separate meetings

between the mediator and each party to the dispute for the formulation of resolution alternatives. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise. Should the parties fail to reach a resolution of the dispute through mediation, then each party is released to pursue other remedies available to them.

16.3 Resolution of Disputes between CM and Subcontractor or Supplier: If a dispute exists concerning a claim between a CM and a Subcontractor or Supplier, the CM agrees to participate with such Subcontractor and/or Supplier in a process substantially paralleling the steps set out in Sections 16.1 and 16.2 above, including the delivery of written notices, submission of supporting data, negotiation with previously uninvolved personnel, and, if such alternative dispute resolution process is unsuccessful, mediation between the parties to the claim. If the CM and Subcontractor or Supplier agreement provides an alternative dispute resolution process, which provides substantially equivalent rights to those set forth herein, it may be followed, unless the CM and affected Subcontractor or Supplier agree to follow the process outlined above. The OWNER is not a party to the alternative dispute resolution process between the CM and Subcontractor or Supplier and will not pay any costs incurred in the process. Each party will be responsible for its own expenses incurred in the process, which will include an equal share of the mediation expenses, unless otherwise determined by the mediator. NOTICE: THE PROCESS SET FORTH HEREIN IS NOT A SUBSTITUTE FOR THE STATUTORY PAYMENT BOND CLAIM PROCESS.

16.4 Claim Calculation:

16.4.1 Delay Claims: The intent of paying for delay damages is to reimburse the CM for actual expense arising out of a compensable delay. No profit or force account markups, other than labor burden, will be allowed for delay claims by the CM seeking reimbursement for expenses arising out of an alleged event of delay. No consequential damages will be allowed to the CM in connection with any claimed delays. If the CM requests compensation for delay damages and the delay is determined to be compensable, then standby equipment costs and project overhead compensation will be based on the duration of the compensable delay and the following:

.1 Standby equipment costs will not be allowed during periods when the equipment would have otherwise been idle. Standby equipment time will not exceed more than eight (8) hours per twenty-four (24) hour day, forty (40) hours per week, and one hundred seventy-six (176) hours per month. Standby equipment costs will be paid at 50 percent (50%) of the applicable Rental Rate Blue Book rates and calculated by dividing the monthly rate by one hundred seventy-six (176), multiplying the result by the number of standby hours and multiplying that number by the regional adjustment factor and the rate adjustment factor contained in the Blue Book. Operating costs will not be allowed.

.2 Project overhead will be determined from actual costs that the CM will be required to document. Project overhead is defined as the administrative and supervisory expenses incurred at the work site and will not include home office overhead.

16.4.2 General: Except as limited with respect to delay claims, as set forth above, the criteria set forth in Section 11.4.1 may be used as a basis to calculate an adjustment in the Contract Amount in the resolution of a claim, provided that there will be no compensation for home office overhead.

16.5 MBE/WBE Program Progressive Sanctions. CM is subject to progressive sanctions for failure of CM to comply with Austin City Code, Chapters 2-9-A and B, as amended:

"Minority-owned and Women-owned Business Enterprise Procurement Program." Available sanctions for Program violations are set forth in Program rules adopted by the Small and Minority Business Resources Department (SMBR), as amended, and may include the following progressive sanctions for Program violations within a rolling 24-month period:(i) a period of probation for up to six (6) months, (ii) a period of suspension from bidding for up to 24 months for the second violation, and (iii) a period of debarment for up to five (5) years for the third violation. If the CM engages in more than one of the violations listed below at any given time, Owner has the discretion to determine whether such actions should be counted as multiple violations of the MBE/WBE Ordinance. Program violations include:

16.5.1 providing false or misleading information to the Owner in connection with the submission of a Bid, responses to request for qualifications or Proposals, Good Faith Efforts documentation, post award compliance or other Program operations;

16.5.2 Substituting or removing M/WBE Subcontractors without first receiving approval for such substitutions, which may include the addition of an unapproved Subcontractor and failure to use a Subcontractor listed in the approved Compliance Plan; and

16.5.3 Failure to comply with the approved Compliance Plan without an approved request for a change, an approved Change Order or other approved change to the Contract.

16.5.4 violation of any other provision of the "Minority-owned and Women-owned Business Enterprise Procurement Program";

16.5.5 providing false or misleading information to the Owner in connection with an application for or challenge to certification, recertification or decertification as a MBE/WBE; and

16.5.6 bid shopping.

The Progressive Sanctions will be administered in accordance with the City of Austin Purchasing Office Probation, Suspension, and Debarment Procedures for Vendors, which includes notice and an opportunity for a hearing.

ARTICLE 17 – MISCELLANEOUS

17.1 Venue: In the event of any suit at law or in equity involving the Contract, venue shall be exclusively in Travis County, Texas and the laws of the State of Texas shall apply to the interpretation and enforcement of the Contract.

17.2 Extent of Agreement: This Contract represents the entire and integrated agreement between the Owner and CM with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

17.3 Cumulative Remedies: The rights and remedies available to the parties are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantees or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. Specifically, the OWNER is not required to only assess liquidated damages, and Owner may elect to pursue its actual damages resulting from the failure of the CM to complete the Work in accordance with the requirements of the Contract Documents.

17.4 Severability: If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of this Contract; this being the intent of the parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

17.5 Independent Contractor: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. CM is an independent contractor and CM's services shall be those of an independent contractor. CM agrees and understands that the Contract does not grant any rights or privileges established for employees of Owner.

17.6 Prohibition of Gratuities: Owner may, by Written Notice to CM, terminate the Contract without liability if is determined by Owner that gratuities were offered or given by CM or any agent or representative of CM to any officer or employee of Owner with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is terminated by Owner pursuant to this provision, Owner shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by CM in providing such gratuities.

17.7 Prohibition Against Personal Interest in Contracts: No officer, employee, independent consultant, or elected official of Owner who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this provision, with the knowledge, expressed or implied, of CM shall render the Contract voidable by Owner.

17.8 Owner's Right to Audit:

17.8.1 Records means all records generated by or on behalf of CM and each Subcontractor and Supplier of CM, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Contract, including, without limitation:

.1 accounting records;

.2 written policies and procedures;

.3 subcontract files (including proposals of successful and unsuccessful Bidders, Bid recaps, etc.);

.4 original estimates and estimating work sheets;

.5 correspondence;

.6 Change Order files (including documentation covering negotiated settlements);

.7 back charge logs and supporting documentation;

.8 general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends;

.9 lump sum agreements between CM and any Subcontractor or Supplier;

.10 records necessary to evaluate: Contract compliance, Change Order pricing, and any Claim submitted by CM or any of its payees; and

.11 any other CM record that may substantiate any charge related to this Contract.

17.8.2 CM shall allow Owner's agent or its authorized representative to inspect, audit, and/or reproduce, or all three, all Records generated by or on behalf of CM and each Subcontractor and Supplier, upon Owner's written request. Further, CM shall allow Owner's agent or authorized representative to interview any of CM's employees, all Subcontractors and all Suppliers, and all their respective employees.

17.8.3 CM shall retain all its Records, and require all its Subcontractors and Suppliers to retain their respective Records, during this Contract and for three (3) years after final payment, until all audit and litigation matters that Owner has brought to the attention of CM are resolved, or as otherwise required by law, whichever is longer. Owner's right to inspect, audit, or reproduce Records, or interview employees of CM or its respective Subcontractors or Suppliers exists during this Contract, and for three (3) years after final payment, until all audit and litigation matters that Owner has brought to CM'S attention are resolved, or as otherwise required by law, whichever is longer, and at no cost to Owner, either from CM or any of its Subcontractors or Suppliers that may furnish Records or make employees available for interviewing.

17.8.4 CM must provide sufficient and accessible facilities during its normal business hours for Owner to inspect, audit, or reproduce Records, or all three, and to interview any person about the Records.

17.8.5 CM shall insert these requirements in each written contract between CM and any Subcontractor or Supplier and require each Subcontractor and Supplier to comply with these provisions.

17.9 Survival: The terms and conditions of this Contract, which contemplate a period of time beyond completion or termination will survive such completion or termination and not be merged therein or otherwise terminated.

17.10 No Waiver: The waiver of any provision of this Contract will not be deemed to be a waiver of any other provision of this Contract. No waiver of any provision of this Contract will be deemed to constitute a continuing waiver unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Contract, whether the default is known or not, shall not constitute a waiver or estoppel of the right to do so.

17.11 Conditions Precedent to Right to Sue. Notwithstanding anything herein to the contrary, the CM will have at least 90 days to give notice of a claim for damages as a condition precedent to the right to sue on the Contract, subject to the contractual claim and alternative dispute resolution processes set forth herein.

17.12 Waiver of Trial by Jury. Owner and CM agree that they have knowingly waived the right to trial by jury and have instead agreed that, in the event of any litigation arising out of or connected to this Contract, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

17.13 Contractor Evaluation: The Owner will review and evaluate the Contractor's Work and performance on the Project and provide the Contractor with a written Contractor Evaluation Report in accordance with City of Austin Administrative Rule R161-13.37. Rule R161-13.37 provides an appeal process.

http://www.austintexas.gov/department/contract-management

End of General Conditions Terms

WARRANTY ITEM NO. _____ (PROJECT NAME)

The General Conditions of the Contract require that Warranty Defects be corrected within 7 days after written notice is received.

TO: _____
CMR name/ address / telephone / fax / email

ATTENTION OF: _____

FROM: _____
project manager name / address / telephone / fax / email

PROJECT: _____
name / location / CIP ID number

END OF ONE YEAR WARRANTY :_____

SUBJECT:_____

[ ] If checked, the damage requires immediate attention. The Contractor has been called.
[ ] If checked, the Consultant has been asked to consult with the Contractor on the problem.

PLEASE CORRECT OR REPAIR THE FOLLOWING ITEM(S):

DATE OF REQUEST_____ **SIGNATURE** _____
_____
Project Manager

xc:
[ ] _____Phone No._____
[ ] _____Phone No._____
[ ] _____Phone No._____
[ ] _____Phone No._____

RESPONSE FROM CM: DATE CORRECTION WAS MADE:_____

The Contractor must endeavor to correct the defect within 7 calendar days after written notice is given. If the defect cannot be corrected in that time, Contractor shall provide a written explanation to the Owner's Representative describing the repairs needed and the time required to complete the repairs.

Description of corrections made:

DATE OF REPLY_____SIGNATURE_____

When the repair is complete, the contractor should return a copy to each of the following:

[ ] _____Phone No._____
[ ] _____Phone No._____
[ ] _____Phone No._____
[ ] _____Phone No._____

End

SUPPLEMENTAL GENERAL CONDITIONS
Section 00810CMR

The Supplemental General Conditions contained herein amend or supplement the General Conditions, Section 00700CMR.

ARTICLE 1 – DEFINITIONS

1.45 Delete in its entirety and replace with the following:

"OWNER - "Owner" means the FILM SOCIETY OF AUSTIN, INC., a Texas 501(c)(3) non-profit corporation, doing business as the Austin Film Society. While the City is the fee owner of the real property and improvements, which are the subject of the contract for Austin Film Society Austin Studios Expansion Project, the City has leased to the Austin Film Society the property and improvements under that certain Lease dated July 22, 2009, as amended March 1, 2013 and November 30, 2014, and has granted the Austin Film Society the right to improve the property under that certain Agreement for Development and Construction of New Cultural Facilities by the Austin Film Society for Public Use Funded in Part with Bond Funds ('the Development Agreement") dated July 22, 2014. Pursuant to the Agreement, any reference to "City" or "City of Austin" as the "Owner" in the Contract Documents will be understood to mean the Austin Film Society, except for those references which refer to the City as a separate regulatory entity or as a participating entity with separate approval authority. A common sense interpretation will be given to the term "Owner" in order to provide for the efficient administration and management of the Contract and Project and all documents executed pursuant to the Agreement. The improvements to be constructed under the Contract for this Project constitute permanent improvement of governmental property, and the laws that apply to public works construction are applicable to the Project."

1.46 Owner's Representative: Add the following:

Broaddus & Associates
1301 S Capital of Texas Highway, Suite, A-302
Austin, TX

1.51 Project Team: Insert "the City staff," following "the Owner's Representative," in the first sentence.

Add the following definitions:

1.68 City - City of Austin, Texas, a municipal corporation, home rule city and political subdivision organized and existing under the laws of the State of Texas, acting through the City Manager or his/her designee, officers, agents or employees to administer design and construction of the Project.

1.69 Commissioning Authority or Agent – A consultant retained by the Owner charged with supporting Architect/Engineer in monitoring the Work for conformance with the Contract Documents and with assisting in the facility's start-up and testing as a member of the commissioning team.

ARTICLE 2- PRELIMINARY MATTERS

Delete 2.1.1 in its entirety. (Owner Controlled Insurance Program is not required.)

ARTICLE 5 - BONDS AND INSURANCE

5.3 Insurance

Add the following:

"5.3.1 CM Provided Insurance

5.3.1.1 General Requirements.

.1 CM shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by OWNER in the care, custody and control of CM prior to and during construction and warranty period.

.2 CM must complete and forward the Certificate of Insurance, Section 00650, to OWNER before the Contract is executed as verification of coverage required below. CM shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by Owner. Approval of insurance by OWNER shall not relieve or decrease the liability of CM hereunder and shall not be construed to be a limitation of liability on the part of CM. CM must also complete and forward the Certificate of Insurance, Section 00650, to Owner whenever a previously identified policy period has expired as verification of continuing coverage.

.3 CM's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

.4 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: City of Austin, Economic Development Department, P.O. Box 1088, Austin, Texas 78767-1088.

.1 In addition to OWNER, the City shall be added as an additional insured.

.5 The "other" insurance clause shall not apply to the Owner where the Owner is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both Owner and CM, shall be considered primary coverage as applicable.

.6 If insurance policies are not written for amounts specified below, CM shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

.7 Owner shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the

underwriter on any such policies.

.8 Owner reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CM.

.9 CM shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

.10 CM shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

.11 CM shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

.12 If Owner owned property is being transported or stored off-site by CM, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect Owner's property.

.13 The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CM.

5.3.1.2 Business Automobile Liability Insurance. Provide coverage for all owned, non- owned and hired vehicles. The policy shall contain the following endorsements in favor of Owner and City:

a) Waiver of Subrogation endorsement CA 0444;

b) 30 day Notice of Cancellation endorsement CA 0244; and

c) The City listed as an additional insured, endorsement CA 2048, or equivalent coverage.

Provide coverage in the following types and amounts

.1 A minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage.

5.3.1.3 Workers' Compensation And Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). CM shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CM. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to Owner. CM's policy shall apply to the State of Texas and include these endorsements in favor of Owner and City:

a) Waiver of Subrogation, form WC 420304 or equivalent coverage; and
b) 30 day Notice of Cancellation, form WC 420601 or equivalent coverage.

The minimum policy limits for Employers' Liability Insurance coverage are:

.1 $1,000,000 bodily injury per accident, $1,000,000 bodily injury by disease policy limit and $1,000,000 bodily injury by disease each employee.

5.3.1.4 Commercial General Liability Insurance. The Policy shall provide the minimum bodily injury and property damage per occurrence are $1,000,000 for coverages A and B. the policy must contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts related to this Project.
b) Products/completed Operations Liability for the duration of the warranty period.
c) Explosion, Collapse and Underground (X, C & U) coverage
d) Independent contractor's coverage (CMs/ SubCMs work).
e) The policy must also include these endorsement in favor of the City

1) Waiver of subrogation, endorsement CG 2404, or equivalent coverage
2) thirty-days' notice of cancellation, endorsement CG 0205, or equivalent coverage
3) The City listed as additional insured, endorsement CG 2010, or equivalent coverage.
4) Aggregate limits of insurance per project, endorsement CG 2503.

5.3.1.5 Builders' Risk Insurance. CM shall maintain Builders' Risk Insurance or Installation Insurance on an all risk physical loss form in the Contract Amount. Coverage shall continue until the Work is accepted by Owner. Owner and City shall be loss payees on the policy. If off-site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.

5.3.1.6 Hazardous Materials Insurance. For Work which involves lead and/or asbestos or any hazardous materials or pollution defined as asbestos, Contractor or Subcontractor responsible for the Work shall comply with the following insurance requirements in addition to those specified above:

.1 Provide a lead and/or asbestos abatement endorsement to the Commercial General Liability policy with minimum bodily injury and property damage limits of $1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of $1,000,000. This policy shall not exclude lead and/or asbestos or any hazardous materials or pollution

defined as lead and/or asbestos, and shall provide "occurrence" coverage without a sunset clause. The policy shall provide 30 day Notice of Cancellation and Waiver of Subrogation endorsements in favor of Owner and City.

.2 CM or Subcontractor responsible for transporting lead and/or asbestos or any hazardous materials defined as lead and/or asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of lead and/or asbestos to provide an MCS 90 endorsement with a $5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of lead and/or asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a $1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of lead and/or asbestos shall provide either an MCS 90 endorsement with minimum limits of $1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of lead and/or asbestos. The endorsement shall, at a minimum, provide a $1,000,000 limit of liability and cover events caused by the hazardous properties of airborne lead and/or asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

.3 Contractor shall submit complete copies of the policy providing pollution liability coverage to Owner and City.

5.3.1.7 Professional Liability Insurance. All contractors providing professional services to meet the requirements of the Contract, including but not limited to excavation safety systems, traffic control plans, and construction surveying, the CM or Subcontractors, shall provide Professional Liability Insurance to pay on behalf of assured all sums which the assured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for a 30-day notice of cancellation in favor of the Owner and the City. The minimum limit of liability for this coverage shall be $1,000,000.

ARTICLE 6 - CM'S RESPONSIBILITIES

6.5.5 Permits, Fees, and Royalties: Add the following:

"Owner will obtain and pay for the following permits, licenses and/or fees:

.1 Site Development Permit.

.2 Building Permit(s). Owner's responsibility for obtaining and paying for the Building Permit(s) shall be limited to the following where applicable: the required Electrical Service (Aid of Construction) Fee, Water and Wastewater Tap Fees, Water and Wastewater Capital Recovery Fees, and Septic Permit Fee. The Owner's responsibility for obtaining and paying for the Building Permit(s) excludes securing and paying for the following where applicable: Driveway Permit (Concrete) Fee, Electrical Permit, Mechanical Permit,

Plumbing Permit, Water Engineering Inspection Fee, Temporary Use of Right-of Way Permit, the gas company's Gas Yard Line Contribution Fee, and any other permits/fees not listed above."

6.6 Laws and Regulations: Add the following:

"**6.6.4** This Work is subject to the Texas Pollution Discharge Elimination System (TPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls and storm water pollution prevention measures throughout the construction period.

Owner shall file the Owner's Notice of Intent to the Texas Commission on Environmental Quality (TCEQ). Owner shall pay the TPDES storm water application fee.

CM's responsibilities are as follows:

.1 Obtain a signed certification statement from all Subcontractors responsible for implementing the erosion / sedimentation controls and other best management practices that are part of the SWPPP. This statement shall indicate that the Subcontractor understands the permit requirements. The certified statement forms shall be attached to and become part of the SWPPP.

.2 Fill out the TCEQ's "Construction Site Notice" form, which is Attachment 2 to the TPDES General Permit TXR150000 (form available on the Internet at attachments/stormwater/txr152d2.pdf and post it near the main entrance of the Work, or at multiple postings if the Work is linear. Mail a copy of the completed Construction Site Notice form to the local Municipal Separate Storm Sewer Systems (MS4) representative:

TPDES Program Coordinator
City of Austin – WPD – ERM
P.O. Box 1088
Austin, TX 78767

.3 Maintain all erosion/sedimentation controls and other protective measures identified in the SWPPP in effective operating condition.

.4 Perform inspections every five (5) working days and after every ½ inch rainfall event, noting the following observations on an inspection form provided by Owner:

- Locations of discharges of sediment or other pollutants from the site.
- Locations of storm water/erosion/sedimentation controls that are in need of maintenance.
- Locations of storm water/erosion/sedimentation controls that are not performing, failing to operate, or are inadequate.
- Locations where additional storm water/erosion/sedimentation controls are needed.

.5 Maintain at Work site at all times a copy of the SWPPP (with all updates, as described below) and inspection reports.

.6 Update the SWPPP as necessary to comply with TPDES permitting requirements, which includes noting changes in erosion/sedimentation controls and other best management practices that are part of the SWPPP and which may be necessary due to the results of inspection reports. Any SWPPP revisions or updates must be signed and certified by a Certified Professional in Erosion and Sedimentation Control (CPESC) or a Registered

Professional Engineer. If the SWPPP includes engineering calculations, then SWPPP must be sealed and signed by a Registered Professional Engineer.

.7 Upon completion of the Work, provide TPDES records to Owner."

6.13 INDEMNIFICATION: Revise 6.13.1, first sentence as follows: Insert "City", before Owner, A/E, A/E's Consultant and . . .".

ARTICLE 14 - PAYMENTS TO CM AND COMPLETION

14.4 Decisions to Withhold Payment:

Reference 14.4.1; add the following:

".16 failure of CM to meet the Insurance and/or Safety Program requirements.

.17 property damage losses that are the responsibility of the CM (reference section 00810CMR, 5.3.2.5.4)"

1. Payment

A. Classification Definitions, Building and Heavy and Highway

Definitions for Building Construction and Heavy and Highway classifications shall conform to the current "Dictionary of Occupational Titles" as published by the U.S. Department of Labor.

B. Minimum Wages

Workers on Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Heavy and Highway Trades. Such wage rates shall be used throughout the Contract. If a classification is to be used, which is not listed in the attached wage rates, CONTRACTOR shall submit to OWNER rates and classification proposed for use, for approval, **prior** to performance of the Work.

NOTE: The terms journeyman and apprentice apply to both union and independent workers, and are not intended to imply that these positions are union workers only.

All laborers and mechanics working upon the Work for this Project shall be paid unconditionally and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by Secretary of Labor under the Copeland Act, Title 29 CFR, Part 3) full wages accrued and when due, computed at rates not less than wage rates bound herein pertaining to type of Work being performed. When Work is of such a nature that both Building and Heavy and Highway wage scales are incorporated into contract, CONTRACTOR shall pay wage rates to mechanics or laborers performing Work in more than one classification at the rate indicated for each classification for time actually worked as determined by area practice applicable to type (Site Construction Crafts or Building Construction Crafts) of Work being performed without regards to skill. Salaried specialists (project superintendent and administrative personnel only) in the permanent employment of CONTRACTOR do not fall under any Wage Classification. Wage rates shall be posted by CONTRACTOR at site(s) of Work in prominent, easily accessible places where they can be seen by all workers. The following shall also be posted by the CONTRACTOR alongside prevailing wage rates: City of Austin wage contact posters (English and Spanish), City of Austin Equal Employment Opportunity posters (English and Spanish).

C. Overtime Requirements

No CONTRACTOR, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such Work, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours in excess of forty hours in such workweek.

2. Apprentices

Locally & Federally Funded Projects

Apprentices and Trainees will be permitted to work as such only when they are registered, individually, under a bonafide Apprenticeship or Trainee program registered with the Bureau

of Apprenticeship and Training, United States Department of Labor. The allowable ratio of Apprentices or Trainees to journeymen in any craft classification shall not be greater than the ratio permitted to CONTRACTOR as stated in the registered apprenticeship program standards. Any employee listed on a payroll at an Apprentice or Trainee wage rate, who is not registered as above, shall be paid the wage rate provided in Contract for Work employee actually performed. CONTRACTOR, Subcontractor, or Sub-subcontractor shall furnish to OWNER written evidence of registration of his program for Apprentices and Trainees as well as of the appropriate ratios and wage rates, for the area of construction **prior** to using any Apprentices or Trainees on this Contract.

3. Withholding of Payments

OWNER may withhold or cause to be withheld from CONTRACTOR as much of the accrued payments as necessary to pay laborers and mechanics employed by CONTRACTOR, Subcontractors, or Sub-subcontractors the amount of wages required to comply with the Contract. In the event of nonpayment of wages to laborers or mechanics working on the site of the Work of this Contract, OWNER may, after Written Notice to CONTRACTOR, take such action as may be necessary to cause suspension of any further payments or advance of funds to CONTRACTOR until such violations have ceased and until restitution has been made. Payments may also be withheld if CONTRACTOR fails to maintain weekly payroll reports or fails to provide copies in a timely manner upon request of Owner.

4. Payrolls

A. CONTRACTOR shall keep records showing:

1. the name, address and occupation of each worker employed by the CONTRACTOR or subcontractor(s) in the construction of the public work.

2. the actual per diem wages paid to each worker.

3. Employee Certification. CONTRACTOR, all levels of Subcontractors shall identify in writing, the classification agreed to by all laborers and mechanics employed by them in the execution of the Contract, and pay not less than rates specified in the attached Building Construction and Heavy and Highway Wage Rate Schedule(s). Contractor shall prepare a completed form for the signature of Employee and a witness shall sign the form in the presence of Employee. If work performed by worker is different than the trade classification agreed upon, the worker shall be paid for that work no less than the minimum prevailing wage for that specified trade.

4. Payroll Deduction Authorization Form. CONTRACTOR, Subcontractor, and Subsubcontractor shall prepare for employee signature a payroll deduction authorization form to identify all payroll deductions excluding those required by statute, such as federal income taxes, medicare and social security.

B. The record shall be open at all reasonable hours to inspection by the officers and agents of the Owner as requested. CONTRACTOR will be responsible to provide copies of records as requested by the Owner within two (2) working days. Payrolls relating to this Work shall be maintained during term of Contract and preserved for a period of three (3) years thereafter by CONTRACTOR for all laborers and mechanics working on the Work.

C. A Statement of Compliance, a letter signed and dated by party responsible for supervising the payment of persons employed by CONTRACTOR or subcontractor

shall accompany payrolls required by Owner. The Statement of Compliance letter shall identify but is not limited to:

1. name of signatory party and title,
2. name of project, payroll period and
3. name of CONTRACTOR or Subcontractor.

The signed letter attests that the payroll complies with 29CFR issued by the Secretary of Labor.

D. Federal Funding

In the event that federal funding is used:

1. Contractor and all levels of Subcontractors shall submit weekly certified payroll reports and signed wage compliance statements to the Owner's designated office no later than seven (7) calendar days after the scheduled payday.

2. Contractors and all levels of Subcontractors shall pay all "mechanics and laborers" not less often than once per week, for work performed the previous week.

3. Submit to the Owner's designated office Standard Form 1413, Statement and Acknowledgement, from each subcontractor prior to the subcontractor performing work on the project.

5. Complaints and Penalties

A public body awarding a contract, and an agent or officer of the public body, shall, take cognizance of complaints of all violations of Chapter 2258 Texas Government Code Title 10 or applicable Federal Statutes committed in the execution of the contract; and withhold money forfeited or required to be withheld under this chapter from the payments to the CONTRACTOR under the contract. A CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter. Confirmed Disciplinary action taken by CONTRACTOR against employees who provide information during an interview or investigation by the Owner on wages received, may result in suspension or debarment from consideration of award of City contracts.

6. Area Practice

A. Heavy and Highway Construction Rates shall be used on this Project, unless the Project consists primarily of Building Construction and Building Construction Rates are to be used.

1. Building Construction consists generally of all aspects of construction of buildings, which are sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies, including without limitation the installation of utilities and equipment, both above and below grade level, as well as incidental demolition, grading, utilities, paving and other site work. Buildings need not be "habitable" to be classified as Building Construction and the installation of heavy machinery and/or equipment will not generally change a Building Construction project's classification.

2. The determination of Building Construction Wage Rates includes all construction trades and work necessary to complete a building, regardless of the number of

contracts involved, so long as all such contracts are closely related in purpose, time and place.

B. For projects that involve both Building Construction and Heavy and Highway trades, the following classifications shall be used:

1. A multiple classification shall be used if Building Construction items are more than 20% of the Heavy and Highway project cost.

2. A multiple classification shall be used if Heavy and Highway Construction items are more than 20% of the Building Construction Project cost.

C. Split classifications/multiple wage rate schedules: When construction work requires that an employee perform work under multiple classifications or multiple wage scales, the employer must pay that worker (at least) the highest prevailing wage or the employer payroll records must accurately set forth the times spent performing the work of each classification and under each scale. For those projects that involve both Building Construction and Heavy and Highway trades, the Heavy and Highway wage rates may only be applied to workers when engaged in site work at least five (5) feet beyond the building.

7. Texas Open Records Act

Unless covered by an exception to mandatory disclosure under the Texas Public Information , Act, Chapter 552, Texas Government Code, any and all documents submitted to the City of Austin become Public Records and are, therefore, subject to public disclosure.

Wage Rates For This Project ~~Are Attached~~

will be Provided Prior to Construction Phase

End

PART 1 - GENERAL

1.1 RELATED DOCUMENTS:

Drawings and general provisions of Contract, including General Conditions, Section 00700CMR, and Supplemental General Conditions, Section 00810CMR, and Division 1 requirements.

1.2 DESCRIPTION OF WORK:

About AFS

AFS began in 1985 with a group of friends watching films that were not distributed to the general public. Over the years, AFS has grown from a primarily film-watching organization into a non-profit organization that empowers our community to make, watch and love film and creative media.

About Austin Studios

For more than a decade, AFS has operated Austin Studios campus with the goal of encouraging Austin's creative media community. Austin Studios was founded by AFS in 2000 as a part of the City of Austin's economic growth strategy; in 2006, AFS received $6 million from the City of Austin to provide infrastructure throughout the campus and outfit two soundstages. Since it opened, Austin Studios has been used for the production of films, television series, commercials, photoshoots, music videos, and community events. These productions resulted in more than $1.4 billion in economic impact to the Austin area.

Austin Studios is on 20 acres at the eastern edge of the Robert Mueller Municipal Airport (Mueller) redevelopment. Its facilities were originally part of the Austin municipal airport; its soundstages are former airplane hangars and its production offices were originally used for the private terminal. Currently, Austin Studios features approximately 190,000sf of permanent facilities; this square footage is divided amongst eight different structures: Stages 1 through 7, the "Red Building", and the former Armory. Bungalows A through E are temporary facilities but provide additional production office and AFS office space.

AFS' Vision for Austin Studios

With the City's latest contribution of $5.4 million and the transfer of the 75,000 sf former National Guard Armory building, AFS is positioned to renovate the campus into a more productive space for the film and creative media industry. AFS' design team has only begun its efforts to produce three site development options and preliminary engineering reports that ensure the most efficient use of the PROPERTY and placement of infrastructure for future growth. Construction, however, is likely to include the following elements:

1. **Campus Organiation – Connectivity, Access, Security and Wayfinding.** The Austin Studios Expansion project will reconfigure the campus to locate "public" functions to a more accessible part of the compound, which means that circulation and access paths will need to be added and clarified. Security gates, screening fences, and key-card access points will need to be strategically placed to enable a separation of "public" and "private" functions. Landscaping, signage, and wayfinding will be required to unify the compound and facilitate efficient movement of vehicles, pedestrians, and cyclists. Opportunities for enhanced integration with the surrounding neighborhoods will be considered.

2. **Renovation of the former National Guard Armory Building.** AFS' vision is to adapt the approximately 75,000sf former National Guard Armory building into a Creative Media Hub that will serve as a home base for the film and creative media community in Austin. Core building systems such as utilities infrastructure, restrooms, roof, and life safety require upgrades; shared amenities such as a central lobby, conference and meeting rooms, screening room, break room, and media lounge are desired. An implementation plan that addresses future expansion opportunities is needed.

3. **Infrastructure.** In order to facilitate increasing levels of film and creative media activities, the Austin Studios Expansion project requires upgrades to critical site and building infrastructure including electrical, water, sanitary sewer, and communications services. Infrastructure capacities need to be sized to accommodate current and future expansion needs. Site drainage and detention needs to be addressed.

4. **LEED Certification**. AFS' development agreement with the City requires the project to endeavor to achieve LEED Silver certification as administered by the U.S. Green Building Council (USGBC) and its nationally known Green Building Rating System. These requirements are shown in all applicable specifications including in the Division 1 sections 01352 and 01505. It is the intent of the Owner to work in partnership with the Contractor in implementing sustainable construction practices to the greatest extent possible.

PROJECT BUDGET: The Construction Cost Limitation for this project is $3,800,000.

SERVICES: Selected Contract Manager-at-Risk will be expected to provide pre-construction, construction and post-construction services.

1.3 SUBMITTALS

Provide shop drawings and other information as required by Section 01300 for coordination of the work.

1.4 CONTRACTOR'S USE OF CONSTRUCTION SITE

The construction site will be in use by public throughout the duration of contract. The CONTRACTOR shall refer to Section 01040, Project Coordination for coordination required to minimize disturbance and hazards to pedestrian as well as automobile traffic. CONTRACTOR shall not unreasonably encumber the construction site with materials or equipment. CONTRACTOR shall assume reasonable responsibility for protection of construction site.

PART 2 - PRODUCTS

NOT USED

PART 3 - EXECUTION

NOT USED

End

APPENDIX 1

AGREEMENT FOR DEVELOPMENT AND CONSTRUCTION OF NEW CULTURAL FACILITIES BY THE AUSTIN FILM SOCIETY FOR PUBLIC USE FUNDED IN PART WITH BOND FUNDS

7/22, 2014

TABLE OF CONTENTS

Page

Article 1. DEFINED TERMS 2
1.1. A/E 2
1.2. A/E Professional Services 2
1.3. Approved Team 2
1.4. Austin Film Society PM 2
1.5. Austin Film Society PM Services 2
1.6. Bond Funds 2
1.7. CCRI 2
1.8. Change Order 3
1.9. City Contribution 3
1.10. City PM 3
1.11. Concept Plan 3
1.12. Contractor 3
1.13. Contractor Services 3
1.14. Contract Documents 3
1.15. Effective Date 3
1.16. Exhibits 4
1.17. Improvements 4
1.18. Milestone Deliverables 4
1.19. Progress Documents 4
1.20. Project Team 4
1.21. Property 4
1.22. Record Documents 4
1.23. SME 4
1.24. Work 4

Article 2. DESIGN AND CONSTRUCTION OF THE IMPROVEMENTS 4
2.1. Austin Film Society PM Contract Procurement and Management 4
2.2. A/E Contract Procurement and Management 5
2.3. Contractor Contract Procurement and Management 5
2.4. SME Contracts Procurement and Management 5
2.5. Assignment 6
2.6. Wage Rates/Prevailing Wage 6
2.7. City Certified Minority-Owned and Women-Owned Enterprises and Local Small Business Participation 7
2.8. LEED Certification Objective 10
2.9. Design Review, Approval and Authorized Changes 10
2.10. Ownership of Contract Documents 11
2.11. Art In Public Places 11
2.12. Permits and Fees 11
2.13. Zoning, Site Plan and Building Permits 11
2.14. Construction Time of Performance 11
2.15. Construction Standards and Liens 12
2.16. Ownership of Improvements 13
2.17. Assignment of Warranties and Guaranties 13

Article 3. PROJECT DEVELOPMENT COSTS 13
3.1. Project Budget 13
3.2. Budget Changes 13
3.3. CCRI 14
3.4. Austin Film Society Covenants 15

Article 4. OPERATIONS AND MAINTENANCE 17
4.1. Austin Film Society Responsibilities 17
4.2. City Responsibilities 17

Article 5. INSURANCE AND INDEMNITY 18
5.1. Austin Film Society and its Consultants' and Contractors' Insurance and Bonding 18
5.2. Indemnity – Patent or Copyright 19
5.3. Indemnification of Certain Entities 19
5.4. Payment and Performance Bonds 19
5.5. Assumption 20

Article 6. EVENTS OF DEFAULT AND REMEDIES 20
6.1. Austin Film Society's Default and the City's Remedies 20
6.2. The City's Defaults and Austin Film Society's Remedies 20

Article 7. MISCELLANEOUS PROVISIONS 21
7.1. Representation 21
7.2. Termination 21
7.3. Miscellaneous 21
7.4. Book and Records 22
7.5. Notices 22
7.6. Force Majeure 23
7.7. Right to Audit 23
7.8. Indemnity 24
7.9. Dispute Resolution 24
7.10. Confirmation and Waiver 25
7.11. Waiver of Attorneys' Fees 25
7.12. Accessibility of Information 25

EXHIBITS:

Exhibit "A" **The Property**
Exhibit "B" **Concept Plan**
Exhibit "C" **Project Budget**
Exhibit "D" **Insurance and Bond Requirements**
Exhibit "E" **Milestone Deliverables**

AGREEMENT FOR DEVELOPMENT AND CONSTRUCTION OF NEW CULTURAL FACILITIES BY FILM SOCIETY OF AUSTIN, INC. FOR PUBLIC USE FUNDED IN PART WITH BOND FUNDS

This Agreement for Development and Construction of New Cultural Facilities for Public Use Funded in Part with Bond Funds (this "**Agreement**") is dated effective as of the last date signed by the Parties. This Agreement is between the **CITY OF AUSTIN**, a Texas home rule city and municipal corporation (the "**City**"), and **FILM SOCIETY OF AUSTIN, INC.**, a Texas non-profit corporation, doing business as The Austin Film Society ("**Austin Film Society**").

RECITALS

Pursuant to the Lease Agreement dated July 22, 2009 and amended by the Lease Premises Reconfiguration Amendment dated March 1, 2013 (as amended, the "**Lease**"), between the City, as Landlord, and Austin Film Society, as Tenant, Austin Film Society occupies and operates that portion of the (i) former Robert Mueller Municipal Airport and (ii) former National Guard Armory adjacent to East 51st Street, as shown on **Exhibit "A"** attached (collectively, the "**Property**"), as a studio complex for multi-media productions and for educational and job training purposes. In accordance with the Lease and with the City's prior written consent, Austin Film Society may construct Improvements on the Property. Austin Film Society must pay for all costs and expenses associated with construction of the Improvements subject to such contribution as may be made by the City under separate agreements between the City and Austin Film Society. This Agreement is intended by the Parties to govern Austin Film Society's use of City Bond Funds, as that term is defined below, for construction of Improvements on the Property.

Pursuant to City Ordinance No. 20120817-00 passed on August 17, 2012, the Austin City Council approved a special bond election to consider the issuance of general obligation bonds, the proceeds of which would be used for various projects, including the public purposes of planning, designing, engineering, acquiring, constructing, renovating, improving and equipping library, museum and cultural arts facilities ("**Proposition 18**").

Proposition 18 was approved by the voters of the City on November 6, 2012. The voter-approved Bond Funds are referred to in this Agreement as "**Bond Funds**".

Austin Film Society is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("**IRC**") that is exempt from federal income taxes under Section 501(a) of the IRC.

The City and Austin Film Society (sometimes referred to collectively as the "**Parties**" and singly as "**Party**") wish to execute this Agreement to govern the

distribution of the City's disbursement of the Bond Funds to construct the Improvements.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

Article 1.
DEFINED TERMS

1.1. "**A/E**" means the entity hired by Austin Film Society to provide professional architectural and engineering services.

1.2. "**A/E Professional Services**" will consist of services provided in accordance with the proposal accepted by Austin Film Society in accordance with the procedures set out in this Agreement.

1.3. "**Approved Team**" means the team of professionals assembled by Austin Film Society prior to the Effective Date to work on the design of the Improvements. No bond funds will be used to pay for any costs associated with the Approved Team. That team, for which such services are not subject to the selection process of Section 1.1 of this Agreement, consists of:

Cultural Entity:	Austin Film Society
Consultant:	Espero, LLC

1.4. "**Austin Film Society PM**" means the entity hired by Austin Film Society to provide project management services.

1.5. "**Austin Film Society PM Services**" will consist of services provided by the Austin Film Society PM in accordance with the proposal accepted by Austin Film Society and the procedures set out in this Agreement.

1.6. "**Bond Funds**" means the $5,400,000.00 from the 2012 general obligation bond issuance.

1.7. "**CCRI**" means a City Contribution Reimbursement Item being any portion of the Improvements in the Concept Plan and identified in **Exhibit "B"** to this Agreement. Other Improvements can be added to the CCRI if approved in writing by the City prior to construction or by Change Order. Unless a change is submitted to the City and approved by the City prior to construction or by Change Order approved by the City during construction and pursuant to Section 2.9 of this Agreement, only those Improvements described in the Exhibits to this Agreement are eligible for reimbursement.

1.8. "**Change Order**" means a change in the contract executed by and between Austin Film Society and the Contractor for construction related services as contemplated in this Agreement.

1.9. "**City Contribution**" means periodic (but not more than once a month) disbursements by the City of Bond Funds to be used by Austin Film Society solely with respect to the programming/planning, design and construction of cultural facilities for public use in furtherance of Proposition 18. All disbursements of the City Contribution will be disbursed at the City's option: (i) by the City's check delivered to Austin Film Society; (ii) by the City's wire transfer to a federally insured account directed by Austin Film Society; or (iii) by direct or joint check payment to any or all persons or entities entitled to payment for Work performed on, or materials delivered to, or services performed in connection with such disbursement, in the event a claim has been filed or a dispute has occurred with a subcontractor providing labor, services or materials to the Improvements.

1.10. "**City PM**" means the individual designated by the City as a project manager to act on behalf of the City with respect to the day-to-day administration of this Agreement. The City PM will: (i) act as a single point of contact to facilitate communication between the Parties; (ii) schedule project development meetings between the Parties to discuss the Improvements only on an as-needed basis; and (iii) act as a conflict resolution facilitator in connection with the matters arising under this Agreement. The City further agrees to grant the City PM the maximum authority allowed by City policy and regulations and by State and Federal law to approve Change Orders and make other decisions with respect to the design and construction of the Improvements, without the necessity of approval from other City representatives.

1.11. "**Concept Plan**" means the documents attached as **Exhibit "B"**.

1.12. "**Contractor**" means the entity hired by Austin Film Society to provide the construction services for the construction of the Improvements.

1.13. "**Contractor Services**" will consist of services provided in accordance with the construction contract proposal accepted by Austin Film Society in accordance with the procedures set out in this Agreement.

1.14. "**Contract Documents**" means the approved Progress Documents at the end of the construction document phase, plus addenda and Change Orders issued and approved.

1.15. "**Effective Date**" means the last date this Agreement is signed by Austin Film Society and the City.

1.16. "**Exhibits**" means the following Exhibits attached to this Agreement:

Exhibit "A"	The Property
Exhibit "B"	Concept Plan
Exhibit "C"	Project Budget
Exhibit "D"	Insurance and Bond Requirements
Exhibit "E"	Milestone Deliverables

1.17. "**Improvements**" means all the Work to be completed pursuant to this Agreement.

1.18. "**Milestone Deliverables**" means those contract deliverables from the Project Team delivered at critical times during the design and construction phases and more particularly described in **Exhibit "E"**.

1.19. "**Progress Documents**" means drawings, project manual and an updated statement of probable construction costs submitted to the City's PM at the completion of each Milestone Deliverable.

1.20. "**Project Team**" means the Approved Team, the Austin Film Society PM, the City PM, the A/E, and the Contractor hired by Austin Film Society for design and construction of the Improvements.

1.21. "**Property**" means the property leased to Austin Film Society by the City. The Property is described in **Exhibit "A"** attached.

1.22. "**Record Documents**" means Contract Documents, project manual, addenda, Change Orders, change directives, field orders and written interpretations and clarifications that show a complete set of "as-builts", including all changes made during construction.

1.23. "**SME**" means a subject matter expert, which expert may be an individual or organization hired by Austin Film Society to advise the Project Team on specialized design decisions. For example, an SME may be an end user such as a grip or a director of photography.

1.24. "**Work**" means the entire completed construction, or the various separate identifiable parts, required to be furnished under the Contract Documents.

Article 2.
DESIGN AND CONSTRUCTION OF THE IMPROVEMENTS

2.1. **Austin Film Society PM Contract Procurement and Management**. The City shall procure the Project Manager Services in accordance with all applicable laws. Austin Film Society shall have the right to review and participate in (i) the approval of the procurement process, (ii) the committee formed for the selection of the Austin Film

Society PM short list, and (iii) the final selection of the Austin Film Society PM. The City shall have final approval of the selection of the Austin Film Society PM. Austin Film Society shall be responsible for the negotiation of the Project Manager contract. The City shall have the right to review and participate in the negotiations with the Austin Film Society PM. The City has the right to review and approve the Austin Film Society PM contract prior to final execution. Upon completion of the contract, Austin Film Society shall provide a copy of the final Austin Film Society PM contract to the City for its approval, which approval shall not be unreasonably withheld. No amendment changing the scope of Work shall be made to the Austin Film Society PM contract by Austin Film Society without the prior written approval of the City, which approval shall not be unreasonably withheld.

2.2. **A/E Contract Procurement and Management**. The City shall procure the A/E Professional Services in accordance with all applicable laws. Austin Film Society shall have the right to review and participate in (i) the approval of the procurement process, (ii) the committee formed for the selection of the A/E short list, and (iii) the final selection made of the A/E. The City shall have the final approval of the selection of the A/E. Austin Film Society shall be responsible for the negotiation of the A/E contract. The City shall have the right to review and participate in the negotiations with the A/E. Austin Film Society shall use the City's standard professional services agreement in contracting with the A/E. Upon completion of the A/E contract, Austin Film Society shall provide a copy of the final A/E contract to the City for its approval, which shall not be unreasonably withheld. No amendment changing the scope of Work shall be made to the A/E contract by Austin Film Society without the prior written approval of the City, which approval shall not be unreasonably withheld.

2.3. **Contractor Contract Procurement and Management**. Austin Film Society shall procure the Contractor Services in accordance with all applicable laws. The City shall have the right to review and participate in (i) the approval of the procurement process, (ii) the committee formed for the selection of the Contractor short list and (iii) the final selection of the Contractor. Austin Film Society shall be responsible for the negotiation of the Contractor contract. The City shall have the right to review and participate in the negotiations with the Contractor. Austin Film Society shall use the City's standard construction agreement in contracting with the Contractor. Upon completion of the Contractor contract, Austin Film Society shall provide a copy of the final Contractor contract to the City for its approval, which shall not be unreasonably withheld. No amendment changing the scope of Work shall be made to the Contractor contract by Austin Film Society without the prior written approval of the City, which approval shall not be unreasonably withheld.

2.4. **SME Contracts Procurement and Management**. Austin Film Society shall procure the SMEs' services in accordance with all applicable laws. The City shall have the right to review and participate in (i) the approval of the procurement process, (ii) the committee formed for the selection of the SME short lists, and (iii) the final selection of the SMEs. Austin Film Society shall be responsible for the negotiation of the SME contracts. Upon completion of the SME contracts, Austin Film Society shall

provide a copy of the final SME contracts to the City for its approval, which approval shall not be unreasonably withheld. No amendment changing the scope of Work shall be made to the SME contracts by Austin Film Society without the prior written approval of the City, which approval shall not be unreasonably withheld.

2.5. **Assignment**. The A/E, the Contractor, the SME and the Austin Film Society PM contracts (the "**Professional Agreements**") between Austin Film Society and these identified professionals are each subject to the following default and assignment provision: In the event of a material default of Austin Film Society of its obligations under each of the Professional Agreements, the City may, but is not required to, assume the rights and responsibilities of Austin Film Society. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, legal representatives and assigns; provided however, Austin Film Society may not transfer its rights or obligations under this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. Notwithstanding anything to the contrary in this Agreement, Austin Film Society may with the prior approval of the City, which shall not be unreasonably withheld, collaterally pledge the Professional Agreements to any lender who provides Austin Film Society its working line of credit as contemplated in this Agreement, provided, to the extent the lender exercises its rights under its collateral security and pledge agreements, the lender or its affiliates or approved assignee agree to perform or assume the obligations of Austin Film Society under the Lease and this Agreement, and in such case the City will hold a second and inferior collateral assignment. The lender's prior security interest shall contain provisions that the lender shall comply with all laws applicable to the Improvements.

2.6. **Wage Rates/Prevailing Wage**. Austin Film Society, in its administration of procurements, must comply with, and will require its Contractor, who must require its subcontractors supplying construction labor or materials for the Work, to comply with the City's prevailing wage requirements, set forth in Resolution No. 20080605-047, throughout solicitation of any construction contract or procurement of services relating to the construction of the Improvements pursuant to this Agreement. The City has adopted the general prevailing rate of per diem wages established by the U.S. Department of Labor for work of similar character in the locality in which the Work is performed as the minimum per diem wages to be paid in connection with a City of Austin public improvement project for the construction of public buildings. The rates to be paid by the City in these projects are the rates in effect for Travis County, Texas at the time the City advertises these projects for bid. Such resolution adopts the same wages for public-private projects such as this one in which the City is a participant. Additionally, Austin Film Society must comply with the requirements of Resolution 20110728-106 regarding worker safety training.

2.7. **City Certified Minority-Owned and Women-Owned Enterprises and Local Small Business Participation.**

2.7.1. **General**. Austin Film Society shall comply with the applicable standards and principles of Chapters 2-9A (Construction), 2-9B (Professional Services), 2-9C (Nonprofessional Services) and 2-9D (Commodities) of the City's Code and Program Rules for minority-owned and women-owned enterprises ("**M/WBEs**"), referred to as the "**M/WBE Program**", in the purchase of commodities in connection with and design and construction of the Improvements (including leasehold improvements), in effect at the time of the solicitation for the particular scope of work or commodity purchase is to be completed. It is Austin Film Society's responsibility to contact the City's Small and Minority Business Resources Department ("**SMBR**") to ensure Austin Film Society is complying with the current and applicable ordinances and rules.

2.7.2. **Informational Meeting**. Before Austin Film Society expends money subject to the requirements of this Section 2.7, but in any event not less than ninety (90) days from the Effective Date, the local representatives of each party will meet to discuss the requirements for compliance with the M/WBE Program and the City will advise Austin Film Society of all available resources to assist with compliance.

2.7.3. **Supplies/Commodities**. In an effort to further stimulate and positively impact the local economy, Austin Film Society shall use commercially reasonable efforts to provide minority-owned, women-owned and local small businesses certified by the City an equal opportunity to participate as suppliers for materials and services purchased by Austin Film Society exclusively for use in the construction of the Improvements funded with City bond funds. To assist in recruiting efforts, Austin Film Society is required to contact SMBR for a list of available City certified minority-owned, women-owned and local small businesses prior to procuring supplies.

2.7.4. **Supplier Diversity Policy**. Within ninety (90) days after the Effective Date, Austin Film Society shall submit to the City a reasonable supplier diversity policy which will not conflict with the M/WBE Program regarding Austin Film Society's procurement of materials and services to be used at the facilities funded with City bond funds which may be reasonably modified from time to time by Austin Film Society, provided the policy and all modifications are approved by SMBR.

2.7.5. **Threshold Amount**. Austin Film Society agrees to adhere to this policy for the procurement of materials and services for which the cost is more than the purchasing authority established for the City Manager on an annual basis pursuant to Article VII (Finance) § 15 (Purchase Procedure) of the City Charter, and for which there are qualified local certified M/WBE suppliers providing competitive prices and with sufficient financial resources in light of the

particular materials and services to be supplied. The City Manager's purchasing authority is $57,000.00 for 2013, and may increase or decrease per the formula in the City Charter. The City shall advise Austin Film Society annually of any changes to this threshold amount, or Austin Film Society may contact the City at any time for such information.

2.7.6. **Existing Contracts**. This Section 2.7 shall not apply to valid contracts Austin Film Society has in existence on the Effective Date of this Agreement for the procurement of supplies.

2.7.7. **Non-Compliance**. Failure to comply with this obligation shall be considered a breach of this Agreement. Should SMBR determine that Austin Film Society has failed to satisfy its obligation under this Section 2.7, the dispute resolution sections of this Agreement shall apply. With respect to any individual procurement of materials or services for which the cost is less than the amount established above, Austin Film Society is encouraged, but not required, to adhere to the requirements of this Section 2.7. Austin Film Society shall maintain and provide documentation of its efforts to comply with this Section 2.7 to SMBR as part of its monthly reports identified below.

2.7.8. **Design And Construction**. Austin Film Society shall comply with the applicable standards and principles of the M/WBE Program in the design and construction of its facilities constructed with City bond funds, including leasehold improvements, in effect at the time of solicitation for the particular scope of work to be completed. SMBR will work with Austin Film Society to provide it information regarding compliance with the current and applicable ordinances and rules. With respect to any design or construction projects for the facilities constructed with City bond funds, including, but not limited to, leasehold improvements, Austin Film Society, the A/E and the Contractor shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program. Before advertising a bid for any portion of the design or construction work, Austin Film Society shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director of SMBR shall be based on the proposed size, type and scope of work to be undertaken by Austin Film Society and described in the bid documents, and the availability of each group of M/WBEs to perform elements of the Work. The City may utilize either the cumulative M/WBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set project M/WBE participation goals as provided in Section 2-9A-19 of the City Code (Establishment of MBE/WBE Participation Levels for Individual Contracts in Construction), as it may subsequently be amended. The Director of SMBR shall have ten (10) business days from receipt of a bid package from Austin Film Society in order to evaluate and determine the required level for utilization of

M/WBE project or phase-specific goals or subgoals, if any, and shall notify Austin Film Society in writing of the Director of SMBR's determination.

2.7.9. **Outreach**. In an effort to meet the gender and ethnic-specific M/WBE utilization goals, Austin Film Society shall implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally. Austin Film Society may seek the assistance of SMBR in these outreach efforts as described below.

2.7.10. **Documentation**. For any year of the construction of the Improvements in which Austin Film Society, the A/E and the Contractor fail to meet each of the goals or subgoals established by the Director of SMBR, Austin Film Society, the A/E and the Contractor must demonstrate good faith efforts to meet the goals as described in the City's M/WBE Program Ordinance. Austin Film Society shall submit documentation demonstrating its own, the A/E's and the Contractor's good faith efforts to meet the goals as is required below. If Austin Film Society provides documentation to SMBR evidencing its own and it's A/E's and the Contractor's good faith efforts, Austin Film Society shall be deemed in compliance with these paragraphs. Failure to perform this obligation shall be considered a material breach of this Agreement. The City acknowledges that this obligation does not require Austin Film Society to modify, nullify or abrogate any contracts that it has entered into before the Effective Date of this Agreement.

2.7.11. **Assistance**. Austin Film Society shall apprise SMBR when Austin Film Society desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals established for the purchase of commodities and supplies procured for the design and construction of the Improvements. This assistance may include providing a list of certified M/WBE firms from which Austin Film Society may solicit or cause the A/E or its Contractor to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings and assisting Austin Film Society, it's A/E or the Contractor in soliciting M/WBE firms to provide bids. Austin Film Society is not required to solicit participation during a period in which Austin Film Society is not engaged in designing or constructing the Improvements, but rather, Austin Film Society is required to incorporate the standards and principles of the City's M/WBE Program including the M/WBE utilization goals established by the Director of SMBR into its development process as and when such process exists in connection with the design and construction of the Improvements.

2.7.12. **Reports**. Austin Film Society shall provide monthly reports to SMBR no later than the tenth (10th) day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the improvements; (ii) the utilization on a percentage basis of M/WBE firms in the purchase of commodities and supplies for the construction of the Improvements;

and (iii) a summary of Austin Film Society's efforts to implement the standards and principles of the City's M/WBE Program. SMBR shall provide the forms to be used by Austin Film Society in submitting such reports. If SMBR does not provide forms, Austin Film Society may make reasonable efforts to report its information in a readable format for use by SMBR. These reasonable efforts will constitute compliance with this reporting requirement.

2.7.13. **Compliance Determination**. Within thirty (30) days of receipt of Austin Film Society's final monthly report (as is required under Section 2.72.7.11 above for the preceding year, January 1st through December 31st (the "**SMBR Compliance Period**"), SMBR shall determine whether Austin Film Society is in compliance with the requirements of this Section 2.7. Should SMBR determine that Austin Film Society (or its architect or general contractor), has not complied with the obligations of this Section 2.7, SMBR shall report such information to the Austin City Council.

2.8. **LEED Certification Objective**. Austin Film Society shall take steps to insure that its design and construction comply with City requirements relating to Leadership in Energy and Environmental Design (LEED) green building rating system. Austin Film Society will endeavor to achieve the LEED Silver certification for the Improvements.

2.9. **Design Review, Approval and Authorized Changes**. The Property is governed by the Lease which by reference makes the Property subject to the Mueller Master Community Covenant and the Design Guidelines (the "**Guidelines**"), as amended from time to time. As set out in the Lease and the Guidelines, Austin Film Society must submit required improvements to the New Construction Council established by the Guidelines for approval. The parties agree that improvements built on the Property are subject to the restrictions set out in the Lease and the Guidelines. At completion of each Milestone Deliverable, Austin Film Society shall submit to the City's PM one half-size set of drawings, the project manual and an updated statement of probable construction costs for the City's review and confirmation that such Progress Documents conform to the Concept Plan and any previously approved Progress Documents. The City's PM shall advise Austin Film Society within ten (10) business days after receipt of the Progress Documents if any portion or component of the Progress Documents materially differs with the Concept Plan and any previously approved Progress Documents, the Project Budget or violates a provision of this Agreement and shall provide a detail of the reasons why the Progress Documents do not conform to the Concept Plan and any previously approved Progress Documents, or do not conform to the Project Budget or violate this Agreement. If Austin Film Society is so advised, Austin Film Society shall immediately revise the Progress Documents to comply with the Concept Plan and any previously approved Progress Documents, the Project Budget and/or this Agreement. The City PM is not responsible for obtaining any building permit or certificate of occupancy for the Property. Austin Film Society shall not commence construction until Austin Film Society has obtained the confirmation required above for Progress Documents and all required governmental permits for the identified

scope of the Work. No Change Order to the Contract Documents may be made without the prior written consent of the City's PM, which consent shall not be unreasonably withheld or delayed. All other revisions to the Contract Documents prior to the construction phase shall be approved by the City as long as they materially conform to the Concept Plan or any previously approved Progress Documents, the Project Budget and this Agreement. Approval of Progress Documents whether final or not under this Section 2.9 does not constitute approval by the City, or any City department, of the Progress Documents or any component of the Progress Documents in the City's regulatory capacity.

2.10. **Ownership of Contract Documents**. Subject to the legal interests of the A/E and any production professionals, if any, all of the Progress Documents and Contract Documents, any addendum, Change Orders and all other architectural/engineering studies, reports or other materials in any way relating to the construction of the Improvements at the Property (the "**Identified Documents**"), shall be co-owned by Austin Film Society and the City. Subject to the legal interests of the A/E and any production professionals, ownership of the Identified Documents vests solely in the City at the termination of the Lease, no matter how such termination occurs. Austin Film Society, whether from Bond Funds or other sources, is solely responsible for the payment of all fees and expenses in connection with the preparation and use of the Identified Documents. At Final Completion, Austin Film Society shall ensure that the City has its own copy of the Identified Documents and the Record Documents. During the term of this Agreement, the City shall be entitled to additional copies of the Identified Documents at any time and from time to time if the City pays reproduction costs.

2.11. **Art In Public Places**. Austin Film Society shall comply with the City of Austin Art in Public Places ("**AIPP**") requirement in connection with the Improvements. The AIPP budget will be One Hundred Four Thousand and No/100 Dollars ($104,000.00). The AIPP budget includes the artist's contract and the AIPP staff's project management required to manage the AIPP process.

2.12. **Permits and Fees**. Responsibility for obtaining permits and for paying fees associated with the permits is the responsibility and duty of Austin Film Society. Fees for permits are not reimbursable as CCRI.

2.13. **Zoning, Site Plan and Building Permits**. Austin Film Society is responsible for ensuring that appropriate zoning, site plan and building permit approvals have been obtained during appropriate times in the design and construction process. Austin Film Society is also responsible for compliance with the zoning, site plan and building permits during the design, construction and operation of the Improvements.

2.14. **Construction Time of Performance**. Austin Film Society shall diligently pursue completion of the Improvements and shall Substantially Complete the Improvements no later than five (5) years after the date construction begins. "**Substantially Complete**" means the Improvements are finally completed, but for minor

items of punch list work that can be completed in not more than one hundred twenty (120) calendar days, that do not interfere with Austin Film Society's use of the Property, and that do not interfere with Austin Film Society's ability to obtain a certificate of occupancy for the Property. Austin Film Society shall complete work on the punch list items no later than one hundred twenty (120) calendar days after it identifies the items for the punch list ("**Final Completion**"). The City shall extend the dates set out in this Section 2.14 for good cause and for events of Force Majeure.

2.15. **Construction Standards and Liens**. All CCRI must be constructed in accordance with the following construction standards:

2.15.1. Construction must be performed in a good and workmanlike manner in accordance with the Contract Documents.

2.15.2. Construction must be completed using good industry practice for the type of Work in question.

2.15.3. The materials and workmanship must be of a quality greater than or at least equal to the standards set out in the Contract Documents.

2.15.4. All Improvements must be designed and constructed in compliance with all applicable building codes, ordinances and other laws or regulations of any governmental authority having jurisdiction over the construction.

2.15.5. The Work must also comply with the City's M/WBE program requirements for construction projects.

2.15.6. The Work must comply with the Americans with Disabilities Act requirements applicable to municipally owned and operated facilities.

2.15.7. No construction or Work may be commenced until all licenses, permits and authorizations required of all governmental authorities having jurisdiction necessary to commence construction have been obtained.

2.15.8. Austin Film Society shall have obtained and shall maintain in effect the insurance coverage required by this Agreement and the Lease with respect to the Improvements.

2.15.9. After commencement, the construction or Work being performed must be prosecuted within the time schedules and deadlines under this Agreement.

2.15.10. Austin Film Society shall have no right, authority or power to bind the City or any interest of the City in the Property for labor, materials or any

other charge or expense incurred in construction of any Improvements or other Work done on the Property.

2.15.11. Austin Film Society shall take no action to render the City liable for any lien or right of lien for any labor, materials or other charge or expense incurred in connection with any Work performed on the Property and Austin Film Society shall in no way be considered as the agent of the City in the construction, erection or operation of any Improvements made on the Property.

2.15.12. If any liens or Claims for labor or materials supplied or claim to have been supplied to the Property are filed, Austin Film Society shall promptly pay or bond such liens to the City's reasonable satisfaction or otherwise obtain the release or discharge of the lien or Claim.

2.15.13. If during construction Austin Film Society damages any property of the City, Austin Film Society shall be responsible for such damage and shall repair it at Austin Film Society's sole cost and expense. This provision is not intended to limit Austin Film Society's right to seek repair of damage, or payment to repair damage, from a person or entity hired by it to complete construction, if the damage was caused by that person or an agent of the entity. However, Austin Film Society is ultimately responsible for taking the necessary steps to insure that the repair is completed in accordance with applicable codes and standards and paid for from funds that are not Bond Funds or any other City funds.

2.16. **Ownership of Improvements**. Title to all the Improvements located on the Property is and shall remain vested in the City immediately upon the attachment of the Improvement to the Property or to another Improvement located on the Property subject to the rights of Austin Film Society under the Lease.

2.17. **Assignment of Warranties and Guaranties**. To the extent assignable, upon termination of the Lease all warranties and guaranties obtained by Austin Film Society shall be automatically assigned to the City.

Article 3.
PROJECT DEVELOPMENT COSTS

3.1. **Project Budget**. The Project Budget for the Improvements is attached as **Exhibit "C"** and is approved by the City.

3.2. **Budget Changes**. Austin Film Society may not increase the Project Budget without the City's prior written consent. Austin Film Society may shift allocations to budget line items without changing the total Project Budget; provided however, Austin Film Society will provide the City with a copy of the amended Project Budget in such case for its review and approval. Austin Film Society may not decrease the Project Budget in a way that results in a material diminution in value of the Improvements

without approval of the City. Review by the City shall be completed within two (2) weeks of any submittal under this Section 3.2 and approval of the change will not be unreasonably withheld.

3.3. **CCRI**.

3.3.1. **Conditions Precedent to Disbursement**. The City's obligation to contribute the City Contribution will be subject to the satisfaction of the following conditions:

3.3.1.1. Austin Film Society is not in material default of any of its obligation under the Lease and this Agreement and, if any such material default did occur, the default has been cured, and no event or circumstance exist which with the passage of time or giving of notice would constitute an event of material default by Austin Film Society under the terms of the Lease and this Agreement.

3.3.1.2. To the extent that any portion of the City Contribution will be used to construct an Improvement under the Lease, Austin Film Society has satisfied the conditions precedent under the Lease for the design and construction of such Improvement, the Improvement complies with the use of the Property conditions in the Lease, and it complies with the conditions of this Agreement.

3.3.1.3. At least thirty (30) calendar days before the date of the requested disbursement of the City Contribution, Austin Film Society shall deliver to the City PM the following:

3.3.1.3.1. A pay request approved by Austin Film Society and its Project Manager or other form of invoice from Austin Film Society evidencing the reimbursement amount due;

3.3.1.3.2. For services under the Professional Agreements, copies of invoices from all professional services firms of Austin Film Society or the Contractor for services rendered to the Property with respect to each CCRI;

3.3.1.3.3. Other than for the services under the Professional Agreements, records satisfactorily documenting to the City that, with respect to any fees to be paid by the City Contribution, Austin Film Society has selected the applicable payee through a process approved by the City;

3.3.1.3.4. For construction services performed or materials delivered:

3.3.1.3.4.1. The supporting application for payment in the form reasonably approved by the City, showing the schedule of values, by trade, percentage of completion of the CCRI detailing the portion of Work completed and the portion not completed as of the date of the application for payment, updated progress schedule and the City's Subcontract Supplier Awards Expenditure Report, and if requested by the City, copies of invoices from the Contractor for services and labor rendered and materials delivered to the Property with respect to the CCRI.

3.3.1.3.5. For all construction services regardless of how performed:

3.3.1.3.5.1. No later than final payment for the construction services, executed conditional mechanic's lien releases from the Contractor (along with unconditional mechanics lien releases with respect to payments made pursuant to Austin Film Society's prior submission under this Agreement) in recordable form; and

3.3.1.3.5.2. Records satisfactorily documenting to the City that Austin Film Society has complied with Chapter 271 Subchapter H of the *Texas Local Government Code* relating to alternative project delivery methods.

3.3.1.4. For all requested disbursements of the City Contribution, any and all other information reasonably requested by the City, which has not been previously provided.

3.4. **Austin Film Society Covenants**.

3.4.1. **Budget Requirements**. The Project Budget attached to this Agreement is on a form approved by the City. Any changes shall be subject to the terms of Section 3.2 above.

3.4.2. **Contribution Requirements**. Austin Film Society and the City understand and agree that the Property and the uses of the Property are subject to the Lease and the Parties agree this Agreement shall not remove any rights and privileges Austin Film Society may have under the Lease.

3.4.3. **Milestone Deliverables**. Austin Film Society shall, during the course of the design phase and the construction phase, deliver either by mail or hand delivery to the City PM the Milestone Deliverables.

3.4.4. **Financing**. If a contractual commitment includes financing, that financing will be on terms and conditions acceptable to Austin Film Society and

reasonably acceptable to the City. The City agrees that, subject to all terms and conditions of the Lease, Austin Film Society may assign or pledge its leasehold interest under the Lease whereby such lender or such lender's affiliate or approved assignee shall have as a remedy, but not the obligation, to assume the obligations of Austin Film Society under the Lease, and this Agreement and such right shall be approved by the City so long as the City has an assignment of such interest inferior to such lender. The contractual commitments may include a combination of Austin Film Society financing, cash, and pledges, reasonably acceptable to and confirmed by City, all of which are available and restricted for the purpose of payment of construction costs. Austin Film Society shall identify any additional sources of revenue to repay any financing for the Improvements.

3.4.5. **Construction Accounts**. Before the commencement of construction, Austin Film Society shall establish a separate, segregated series of construction accounts (the "**Construction Accounts**") at one or more federally insured financial institutions of Austin Film Society's choosing. The Construction Accounts may be maintained by Austin Film Society at the financial institution, if any, that serves as trustee for any other financing maintained by Austin Film Society. The Construction Accounts may be used only for the purpose of the deposit and withdrawal of construction funds, including Bond Funds, and the deposit and withdrawal of funds for debt service on Austin Film Society's financing of the CCRI. No other funds may be commingled in the Construction Accounts. Austin Film Society shall furnish to the City satisfactory information on the Construction Accounts, including the amounts on deposit prior to commencement of planning and design of the CCRI. Austin Film Society shall furnish, at the City's request, at any reasonable time, any additional information as the City may request regarding the Construction Accounts until completion of the CCRI.

3.4.6. **Bond Covenant**. The City and Austin Film Society understand and acknowledge that the City may finance the City Contribution with the proceeds of obligations, the interest on which is excludable from gross income for federal income tax purposes (the "**Tax Exempt Bonds**") and, in connection with the Tax Exempt Bonds, the City will make certain covenants, representations and provisions to assure compliance with the IRC and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto relating to Tax Exempt Bonds. Austin Film Society agrees to take, or refrain from, actions to ensure the Tax Exempt Bonds satisfy such covenants, representations and provisions. In particular, but not by way of limitation, Austin Film Society will not use or permit the City Contribution, or the Property financed with Tax Exempt Bond Funds, to be used (i) in any activity which constitutes an unrelated trade or business within the meaning of Section 513 of the IRC or (ii) by any person other than a governmental person or an exempt organization described in Section 501(c)(3) of the IRC. Moreover, if the IRC is amended, or regulations or rulings are hereafter promulgated which impose additional requirements applicable to the Tax Exempt Bonds or if it is determined by a court of applicable jurisdiction

that this Agreement fails to comply with the terms of the IRC, then the City and Austin Film Society agree to renegotiate, in good faith, to amend or replace this Agreement in order to comply with the additional requirements only to the extent necessary to preserve the exemption from federal income taxation of interest on the Tax Exempt Bonds.

Article 4.
OPERATIONS AND MAINTENANCE

4.1. **Austin Film Society Responsibilities**. Austin Film Society has the obligation to operate and maintain the Property in accordance with the terms and conditions of the Lease.

4.2. **City Responsibilities**. The City's obligation, if any, to operate and maintain the Property is also only in accordance with the terms and conditions of the Lease.

4.2.1. **Naming and Sponsorship**. Austin Film Society shall have the sole right to contract for and grant sponsorships, advertising space and naming rights for areas, events, programs and advertising panels within the Property subject to applicable laws, zoning and ordinances, and subject to the advance written approval by the City of said sponsorships, advertising and naming rights, which disapproval shall only be for the violation of such name or sponsorship of the IRC or the provisions below and such approval shall not be unreasonably withheld or delayed. The City Manager or his designee shall review and approve naming inside the facilities. The City Manager will bring the Austin Film Society's requests for naming for the outside of buildings or other structures to the Austin City Council for the Austin City Council's approval. Sponsorships, advertising and/or naming rights involving the Property shall not:

4.2.1.1. promote, advertise or relate to alcohol or tobacco products or companies; or

4.2.1.2. be of a non-commercial cause-oriented nature (*e.g.*, promoting or criticizing a political party, public official or candidate; a political or social cause or movement; or a religion or religious establishment or movement); and

4.2.1.3. include any reference to any proper geographic name, unless such reference (i) is to "Austin" or the "City of Austin", or (ii) is part of the proper name of a person or entity selected as a sponsor pursuant to this Section 4.2.1.

4.2.1.4. Any such sponsorship agreements entered into by Austin Film Society shall be ratified or assumed by the City at its election or otherwise terminate upon any termination or expiration of the Lease (as may be

subsequently renewed or extended), pursuant to which Austin Film Society ceases to occupy and use the Property.

4.2.1.5. If the named portion of the facility/campus is destroyed or severely damaged, or Austin Film Society determines it will not maintain the facility, or determines that the facility will be renovated, replaced, relocated or significantly modified or upgraded, then Austin Film Society shall consult with the donor, if available, and the City, and come to a mutually agreeable decision with regard to the naming.

4.2.1.6. If the donor fails to timely fulfill its gift commitment, or if the donor, any of its affiliated entities, or any of their respective principals are involved in any type of material ethical violation as approved by a court of law or administrative hearing or criminal convictions, or Austin Film Society reasonably and in good faith determines that circumstances have changed such that donor's public image, products or services conflicts with the purposes or mission of Austin Film Society, then Austin Film Society may remove the naming from the facility, and Austin Film Society shall provide in its future donor contracts that it shall have no further obligation or liability to the donor and shall not be required to return any portion of the gift already paid. If the issue is a legal or ethical violation as noted in the preceding sentence, the City may direct Austin Film Society to remove the name.

4.2.1.7. No rights or privileges shall be granted by Austin Film Society in exchange for naming and sponsorship that would impair the tax-exempt status, if any, of the Bond Funds used for the CCRI or other portions of the facilities.

4.2.1.8. The naming of the facility as a whole must be done in accordance with City Code unless City Code requirements are specifically waived by the Austin City Council. Signs containing names must comply with applicable City requirements regarding signage.

Article 5.
INSURANCE AND INDEMNITY

5.1. **Austin Film Society and its Consultants' and Contractors' Insurance and Bonding**. Austin Film Society shall require that any firms under the Professional Agreements maintain the insurance and bonds required by the City and listed in **Exhibit "D"** attached to this Agreement and the Lease. If any additional insurance or bonds are required by Federal or State law or by local ordinance, Austin Film Society shall also require the persons and firms hired by it for design and construction of the CCRI under the Professional Agreements to have that insurance and bonding in place throughout their Work on the CCRI. In the event of any material defects in design, materials or workmanship resulting from the Work of the A/E, Austin Film Society PM, the Contractor or any other construction professionals occurs, Austin Film Society agrees, if advised by

its legal counsel, to pursue any causes of action it may have against the appropriate party, or at the option and request of the City, assign to the City such cause of action, subject to any superior rights Austin Film Society's lender may have.

5.2. **Indemnity – Patent or Copyright**. Austin Film Society shall provide in its Professional Agreement with the Contractor that the Contractor shall protect, hold harmless and indemnify Austin Film Society and the City from and against all Claims, damages, judgments and losses arising from infringement or alleged infringement of any United States patent or copyright that arise out of any of the Work performed by the Contractor or used by the Contractor, or by the City, or Austin Film Society at the direction of the Contractor of any article or material to be constructed pursuant to this Agreement. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, Austin Film Society shall promptly notify the Contractor and the Contractor shall be given full opportunity to negotiate a settlement. The Contractor does not warrant against infringement by reason of Austin Film Society's or the A/E's design of articles or their use in combination with other materials or in the operation of any process relating to the Improvements to be constructed pursuant to this Agreement. In the event of litigation, Austin Film Society agrees to cooperate reasonably with the Contractor and all parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

5.3. **Indemnification of Certain Entities**. Austin Film Society shall include in its Professional Agreement negotiated with the Contractor for the Improvements, a provision that the Contractor covenants and agrees to fully indemnify and hold harmless Austin Film Society, the City, the A/E, and their respective current and former employees, officers, directors, volunteers, agents and representatives (the "**Indemnified Entities**"), individually and collectively, from and against any and all costs, Claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal or bodily injury, death and property damage ("**Claims**") made upon any Indemnified Entity directly or indirectly arising out of, resulting from, or related to: (i) a violation or alleged violation of any ordinance, regulation, statute or other legal requirement by the Contractor or any of its agents or employees; or (ii) the Contractor's activities under its Professional Agreement, including any negligent acts or omissions of the Contractor, any agent, officer, director, representative, employee, or consultant occurring in the performance of the rights and duties under its Professional Agreement. This Section 5.3 shall not apply to any Claims resulting from the negligence of any of the Indemnified Entities, but shall include Claims attributable to the extent of the Contractor's sole, contributory, partial, joint, comparative or concurrent acts, omissions or negligence of the Contractor or any subcontractor under the Contractor.

5.4. **Payment and Performance Bonds**. Austin Film Society agrees to and shall require the Contractor to name the City as co-obligee with Austin Film Society on the payment and performance bonds. The payment and performance bonds required of the Contractor under this Agreement shall be in accordance with the specifications provided in **Exhibit "D"** attached to this Agreement.

5.5. **Assumption**. In contracting with the A/E and the Contractor, Austin Film Society will require that each contract, including the Identified Documents, provide that it can be assumed by the City in the event of a termination of the Lease due to an uncured default by Austin Film Society or, at the City's option, upon failure of Austin Film Society's completion of the Improvements during the term of the Lease, subject to the rights of Austin Film Society's lender.

Article 6.
EVENTS OF DEFAULT AND REMEDIES

6.1. **Austin Film Society's Default and the City's Remedies**. Austin Film Society shall be deemed to be in default under this Agreement if Austin Film Society fails or refuses to perform Austin Film Society's obligations under this Agreement, or any representation or warranty made by Austin Film Society pursuant to this Agreement becomes untrue, and after thirty (30) calendar days' notice of an event of default from the City and such default was for any reason other than a default by the City. If Austin Film Society is deemed to be in default under this Agreement after the expiration of the cure period, the City shall be entitled to require specific performance, withhold the City's Contribution, or terminate this Agreement subject to the rights of Austin Film Society's lender, if any, or assume Austin Film Society's obligations and complete the Improvements without liability to Austin Film Society. In the event a default by Austin Film Society is not reasonably curable within such 30-day period, then Austin Film Society shall, only with specific written approval by the City, have additional time to complete the cure of its default so long as it prosecutes its cure diligently and in good faith. Fraudulent statements made in the inducement of the City by board members or officers of Austin Film Society who are materially involved with the Improvements shall be grounds for termination for cause. Upon the occurrence of any event deemed to be a default by Austin Film Society under this Agreement, subject to Austin Film Society's lender's rights, all Professional Agreements, Identified Documents, Progress Documents, Contract Documents and other records relating to the Improvements shall be returned to the City.

6.2. **The City's Defaults and Austin Film Society's Remedies**. The City shall be deemed to be in default under this Agreement if the City fails to meet, comply with, or perform any covenant, agreement or obligation within the time limits and in the manner required in this Agreement. If the City is deemed to be in default under this Agreement, the City shall also have a thirty (30) calendar day time period, after being notified by Austin Film Society of the default, in which to cure the default. After the expiration of the cure period, Austin Film Society may, at Austin Film Society's sole option, do any one or more of the following: (i) terminate this Agreement by written notice delivered to the City; or (ii) exercise any other right or remedy Austin Film Society may have at law or in equity by reason of such default. Austin Film Society may not seek any remedy for non-payment by the City if such non-payment is due to:

6.2.1. Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City; and

6.2.2. Non-Appropriation. The funding of this Agreement is dependent upon the availability of appropriations. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render this Agreement null and void to the extent funds are not appropriated or available. The City shall provide Austin Film Society written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under this Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under this Agreement. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

Article 7.
MISCELLANEOUS PROVISIONS

7.1. **Representation**. Austin Film Society represents and warrants to the City that Austin Film Society did not incur any cost or expense associated with any CCRI prior to the Effective Date, for which Austin Film Society would seek reimbursement under this Agreement.

7.2. **Termination**. This Agreement will automatically terminate upon the first to occur of (i) the termination or expiration of the Lease (as may be reinstated, renewed or continued) or (ii) the expiration or satisfaction of all the terms and obligations under this Agreement by the Parties.

7.3. **Miscellaneous**. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or invalid, such illegal or invalid term or provision shall not affect the balance of the terms and provisions of this Agreement. The Parties agree that no term of this Agreement is intended to modify the Lease and that in the event of any conflict between the terms of the Lease and this Agreement, the terms of the Lease supersede. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas. Venue for any action regarding this Agreement shall be in the District Courts or County Courts of Law of Travis County Texas. This Agreement is to be deemed to have been prepared jointly by the Parties. If any inconsistencies or ambiguities exist, they shall not be interpreted or construed against either Party as the drafter. The Parties shall take such actions and execute such documents as each may reasonably request to carry out the purposes of this Agreement. All section headings are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise effect this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same

instrument. Each Party represents and warrants to the other Party that it is duly authorized to execute this Agreement. In performing the obligations under this Agreement, Austin Film Society shall be an independent contractor, and nothing herein shall be deemed to constitute the City and Austin Film Society as partners or joint venturers. Nothing in this Agreement shall alter in any manner the status of personnel employed by Austin Film Society or by the City, who shall in no event be deemed to be employees of the other. When the approval or consent of the City is required under this Agreement, and it is not otherwise stated, such approval or consent shall not be unreasonably withheld or delayed and in the event the City has not responded to a request for such approval or consent by Austin Film Society within thirty (30) business days of its request, then the parties shall work together to diligently review the request and promptly respond in accordance with the approval schedules set forth in the City Code and rules.

7.4. **Book and Records**. Austin Film Society shall keep proper books of records and accounts in which full and correct entries shall be made of all of its construction transactions and its assets and businesses so as to permit the presentation of financial statements prepared in accordance with sound accounting principles consistently applied on a cash basis; and permit the City, or its representatives, at reasonable times and intervals upon prior notice, to visit Austin Film Society's office.

7.5. **Notices**. If notice, payment, report or other matter is required or permitted to be given under this Agreement, it may be effected by personal delivery to the address set forth below, or by certified mail, postage prepaid, return receipt requested, properly addressed to the appropriate address set forth below:

If to the City:	The City of Austin City Attorney City of Austin Law Department Post Office Box 1088 Austin, Texas 78767-1088
If to the City PM:	The City of Austin Economic Development Department 301 West Second Street, Suite 2030 Austin, Texas 78701 Attn: City PM for Austin Film Society Project
If to Austin Film Society:	Film Society of Austin, Inc. 1901 East 51st Street Austin, Texas 78723 Attn: Executive Director

With a copy to: Rick Triplett, Esq.
Graves. Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701

Such addresses may be changed by notice to the other Parties given in the same manner as above provided.

7.6. **Force Majeure**. Both Austin Film Society and the City agree they shall grant the other Party a reasonable extension of time as appropriate, if conditions beyond the Parties' control or Acts of God, flood, riot, civil insurrection, labor strikes or orders of local or federal government render timely performance of the Parties' services impossible or unexpectedly burdensome. The Party suffering the impossibility or burdensome conditions must provide written notice to the other Party within ten (10) business days of the onset of such performance delay, specifying the reasons therefore. Consent to an extension of time for performance under such circumstances will not be unreasonably withheld, conditioned or delayed. Failure to fulfill obligations due to conditions beyond either Party's control shall not be considered a breach of this Agreement; provided, however, that such obligations shall be suspended only for the reasonable duration of such conditions.

7.7. **Right to Audit**. Austin Film Society agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall, upon reasonable notice to Austin Film Society, have access to, and the right to audit, examine or reproduce at the expense of the City any and all records of Austin Film Society related to its performance under this Agreement. Any audit or examination shall take place at the offices of Austin Film Society during reasonable business hours. Austin Film Society shall retain all such records for a period of three (3) years after final payment of the CCRI under this Agreement, or until any audit and litigation matters relating to the Improvements or this Agreement that the City has brought to the attention of Austin Film Society are resolved, whichever is longer. Austin Film Society agrees to refund to the City any overpayments disclosed by any such audit and the City agrees to pay any underpayments of the Bond Funds disclosed by any such audit, subject to the City's right to decline payment as set out in Sections 6.2 and 6.2.1 above. At the request of Austin Film Society, the City shall provide Austin Film Society a copy of such audit. In addition, Austin Film Society shall include in its Professional Agreement with the Contractor the following:

7.7.1. The Contractor agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine or reproduce any and all records of the Contractor related to Austin Film Society's performance under this Agreement. The Contractor shall retain all such records for a period of three (3) years after final payment under the Professional Agreement, or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved,

whichever is longer. The Contractor agrees to refund to Austin Film Society any overpayments disclosed by any such audit.

7.7.2. The Contractor agrees to include the terms of Section 7.7.1 above in all subcontractor agreements entered into by the Contractor in connection with the Professional Agreement.

7.8. **Indemnity**.

7.8.1. Indemnified Claims shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.8.1.1. damage to or loss of the property of any person (including, but not limited to, the City, the Contractor and their respective agents, officers, employees and subcontractors; the officers, agents and employees of such subcontractors; and third parties); and/or

7.8.1.2. death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including, but not limited to, the agents, officers and employees of the City, the Contractor and third parties).

7.8.2. Fault shall include negligence, willful misconduct or a breach of any legally imposed strict liability standard.

AUSTIN FILM SOCIETY SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF AUSTIN FILM SOCIETY, OR ITS AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, IN THE PERFORMANCE OF AUSTIN FILM SOCIETY'S OBLIGATIONS UNDER THIS AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR AUSTIN FILM SOCIETY (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM. THIS INDEMNIFICATION DOES NOT INCLUDE INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CITY, OR THE CITY'S AGENTS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES OR SUBCONTRACTORS.

7.9. **Dispute Resolution**. In the event of a dispute, either Party may make a written request for a meeting between representatives of each Party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the Parties.

Each Party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both Parties, in which event the Parties may proceed directly to mediation as described below. If the efforts to resolve the dispute through negotiation fail, or the Parties waive the negotiation process, the Parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and Austin Film Society agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the Parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The Parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and Austin Film Society will share the costs of mediation equally.

7.10. **CONFIRMATION AND WAIVER. AUSTIN FILM SOCIETY CONFIRMS TO THE CITY THAT IT IS NOT RELYING ON, AND WAIVES ANY CLAIM REGARDING, ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY CONCERNING OR RELATING TO THE PROPERTY, THE CONDITION OF THE PROPERTY, COMPLIANCE OF THE PROPERTY WITH THE LAWS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, INCOME TO BE DERIVED THEREFROM OR EXPENSES TO BE INCURRED WITH RESPECT THERETO, THE OBLIGATIONS, RESPONSIBILITES OR LIABILITIES OF THE OWNER THEREOF, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY. AUSTIN FILM SOCIETY ACKNOWLEDGES AND AGREES WITH THE CITY THAT AUSTIN FILM SOCIETY IS ENTERING INTO THIS AGREEMENT AND THE TRANSACTION CONTEMPLATED HEREIN RELYING SOLELY UPON ITS OWN CONSULTANTS, LEGAL COUNSEL, EVALUATIONS AND EXAMINATIONS. AUSTIN FILM SOCIETY SPECIFICALLY ACKNOWLEDGES THAT THE CITY CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWER.**

7.11. **Waiver of Attorneys' Fees**. In consideration of the award and execution of this Agreement and in consideration of the City's waiver of its right to attorneys' fees, Austin Film Society knowingly and intentionally waives its right to attorneys' fees under Section 271.153 of the Texas Local Government Code in any administrative proceeding, alternative dispute resolution proceeding or litigation arising out of or connected to this Agreement.

7.12. **Accessibility of Information**. Austin Film Society is required to make, upon proper request, any information created or exchanged with the City pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public

Information Act, available in a format that is accessible by the public at no additional charge to the City.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first set forth below.

CITY OF AUSTIN, a Texas home rule city and municipal corporation

By: _____
Name: Robert Goode
Title: Assistant City Manager
Date: 7/22, 2014

FILM SOCIETY OF AUSTIN, INC., a Texas non-profit corporation, doing business as The Austin Film Society

By: _____
Rebecca Campbell, Executive Director

Date: 7/17, 2014

EXHIBIT "A"

THE PROPERTY

AUSTIN FILM STUDIOS
(BOUNDARY EXHIBIT)

20.061 ACRES
AUSTIN FILM TRACT
RMMA

FN. NO. 09-154(AJM)
JUNE 4, 2009
BPI JOB NO. 1400-26.94

DESCRIPTION

OF 20.061 ACRES OF LAND OUT OF THE JOSEPH BURLESON SURVEY NO. 10, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT CONVEYED TO THE CITY OF AUSTIN, BY DEED OF RECORD IN VOLUME 428, PAGE 245, OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 20.061 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2-inch iron rod with cap set at the intersection of the southerly right-of-way line of East 51st Street (90' R.O.W.) and the easterly right-of-way line of Future Vaughan Street (60' R.O.W./not yet of record), for the northwesterly corner hereof;

THENCE, over and across said City of Austin tract, along said southerly right-of-way line of East 51st Street, for a portion of the northerly line hereof, the following three courses and distances:

1) Along a non-tangent curve to the left, having a radius of 1000.23 feet, a central angle of 02°52'22", an arc length of 50.15 feet, and a chord which bears S65°09'18"E, a distance of 50.15 feet to a 1/2-inch iron rod found at the end of said curve;

2) S66°37'37"E, a distance of 366.27 feet to a 1/2-inch iron rod found at the beginning of a non-tangent curve to the left;

3) Along said curve, having a radius of 1477.40 feet, a central angle of 13°23'30", an arc length of 345.31 feet, and a chord which bears S73°17'02"E, a distance of 344.52 feet to a 1/2-inch iron rod found at the end of said curve, being on the northerly line of said City of Austin tract, also being the southwesterly corner of Lot 1, F.V.M.F. Addition, a subdivision of record in Book 80, Page 209 of the Plat Records of Travis County, Texas;

THENCE, S62°29'38"E, leaving the southerly right-of-way line of East 51st Street, along the southerly line of said Lot 1, for the northerly line of said City of Austin tract and a portion of the northerly line hereof, a distance of 867.96 feet to a 1/2-inch iron rod with cap set in the westerly right-of-way line of Future Tilley Street (R.O.W. varies/not yet of record), for the northeasterly corner hereof;

THENCE, S42°17'46"W, leaving the southerly line of said Lot 1, over and across said City of Austin tract, along said westerly right-of-way line of Future Tilley Street, for the easterly line hereof, a distance of 551.23 feet to a 1/2-inch iron rod with cap set for the southeasterly corner hereof;

THENCE, leaving said westerly right-of-way line of Future Tilley Street, continuing over and across said City of Austin tract, for the southerly line hereof, the following four (4) courses and distances:

1) N47°36'07"W, a distance of 538.82 feet to a 1/2-inch iron rod with cap set at an angle point;

2) S42°23'53"W, a distance of 401.38 feet to a 1/2-inch iron rod with cap set at an angle point;

3) N43°25'06"W, a distance of 392.30 feet to a 1/2-inch iron rod with cap set at an angle point;

4) S87°00'00"W, a distance of 270.00 feet to a 1/2-inch iron rod with cap set in said easterly right-of-way line of Future Vaughan Street, for the southwesterly corner hereof;

THENCE, continuing over and across said City of Austin tract, along said easterly right-of-way line of Future Vaughan Street, for the westerly line hereof, the following three (3) courses and distances:

1) N03°00'00"W, a distance of 429.60 feet to a 1/2-inch iron rod with cap set at a point of curvature of a curve to the right;

2) Along said curve, having a radius of 270.00 feet, a central angle of 31°00'00", an arc length of 146.08 feet, and a chord which bears N12°30'00"E, a distance of 144.31 feet to a 1/2-inch iron rod with cap set at the point of tangency of said curve;

3) N28°00'00"E, a distance of 188.52 feet to the **POINT OF BEGINNING**, containing an area of 20.061 acres (873,846 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(93), CENTRAL ZONE, UTILIZING CITY OF AUSTIN PROVIDED RMMA GPS CONTROL MONUMENTS RM01-RM10.

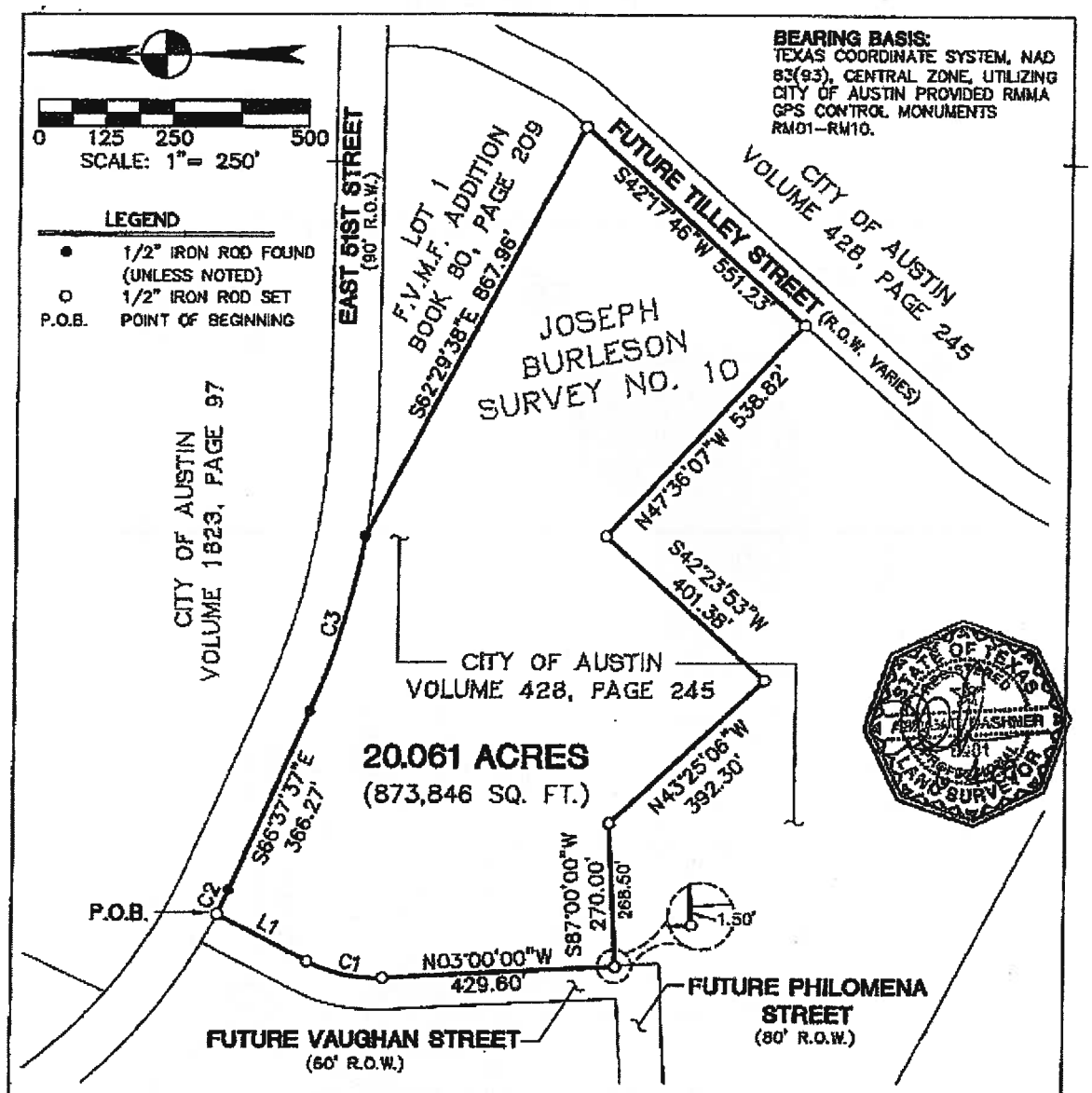
I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE THAT THIS DESCRIPTION IS BASED UPON A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS DESCRIPTION.

6-4-09

ABRAM C. DASHNER, R.P.L.S.
NO. 5901
STATE OF TEXAS

BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
211 WEST SIXTH STREET
SUITE 600
AUSTIN, TEXAS 78701

STATE OF TEXAS
REGISTERED
ABRAM C. DASHNER
5901
PROFESSIONAL
LAND SURVEYOR



CURVE TABLE

No.	DELTA	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	31°00'00"	270.00	146.08	144.31	N12°30'00"E
C2	2°52'22"	1000.23	50.15	50.15	S85°09'18"E
C3	13°23'30"	1477.40	345.31	344.52	S73°17'02"E

LINE TABLE

LINE	BEARING	LENGTH
L1	N28°00'00"E	188.52

Bury+Partners
ENGINEERING SOLUTIONS
221 West 6th Street, Suite 660
Austin, Texas 78701
Tel. (512)328-0011 Fax (512)328-2426
Bury+Partners, Inc. ©Copyright 2009

SKETCH TO ACCOMPANY DESCRIPTION

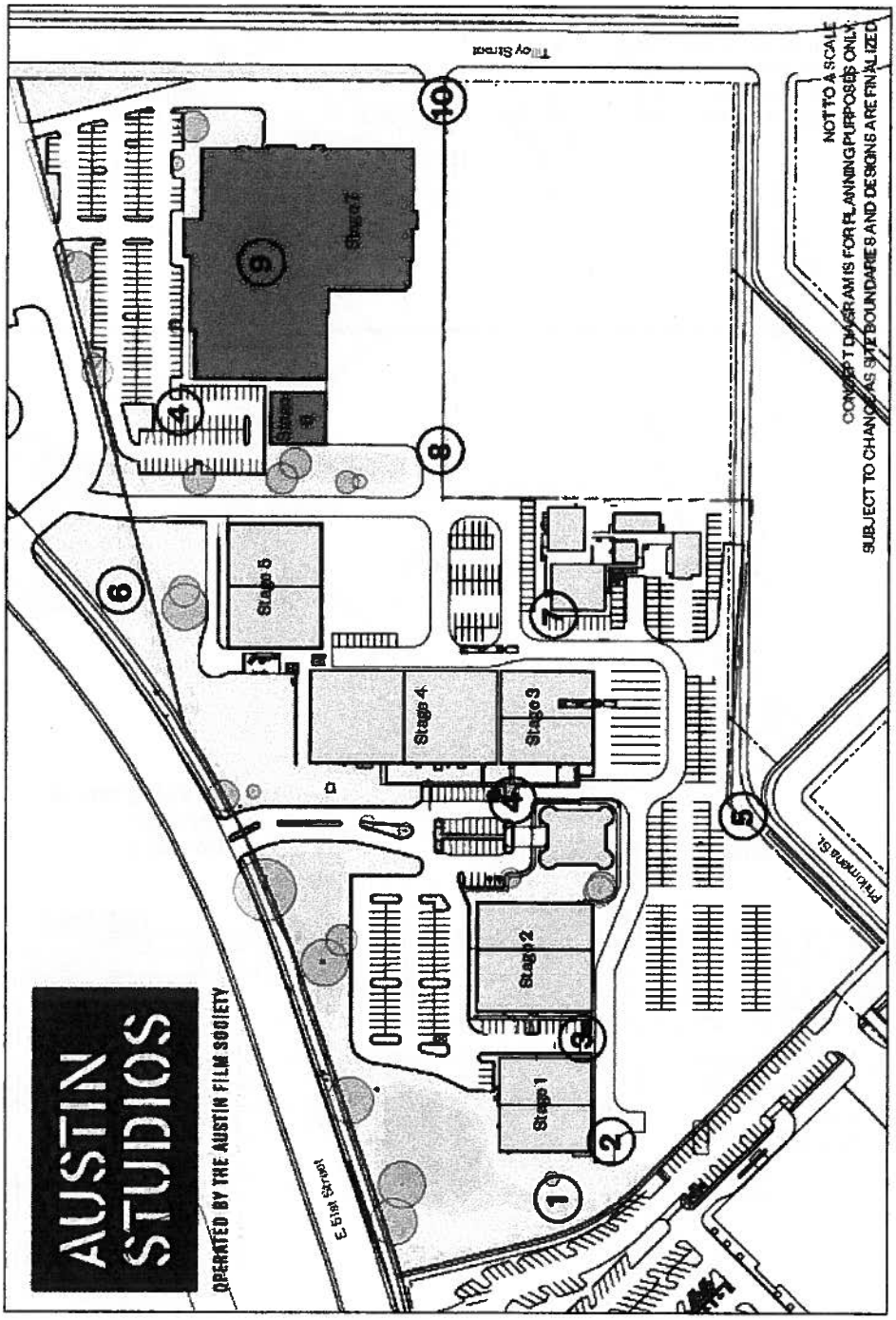
OF 20.061 ACRES OF LAND OUT OF THE JOSEPH BURLESON SURVEY NO. 10, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN TRACT CONVEYED TO THE CITY OF AUSTIN, BY DEED OF RECORD IN VOLUME 428, PAGE 245, OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS.

CATELLUS

DATE: 6/4/09	FILE: H:\1400\29\140029EX16.dwg	FN No.: 09-154(AJM)	DRAWN BY: AJM	PROJ. No: 1400-26.94

EXHIBIT "B"

CONCEPT PLAN



AUSTIN STUDIOS CONCEPT DIAGRAM*

1**	Security, Screening & Landscaping Improvements • Install Fencing, Pedestrian Gate with Key-Card Access, Pedestrian Path and Outdoor Break Area/Garden • Upgrade & Install Additional Security Cameras
2**	Drainage & Foundation Improvements • Reinforce Stage 1 Foundation, Reconstruct and Enhance Drainage Swale
3	Security & Vehicular Connectivity Upgrades • Widen Gate Opening, Install Automatic Gate with Key-Card Access, Upgrade Security Cameras
4**	Infrastructure Upgrades • Upgrade Water, Wastewater, Telecommunications, and Electrical Service • Retrofit HVAC Systems (Stage 3, Red Building) for Energy Efficiency
5	Security & Screening Improvements*** • Install Fencing and Pedestrian Gates with Key-Card Access
6**	Accessibility, Wayfinding, Security & Landscaping Improvements • Complete ADA-Compliant Access Pathways and Enhance Landscaping Along East 51st Street • Install Monumental & Directional Signage, Upgrade & Install New Automatic Gates with Key-Card Access & Security Cameras
7	Trailers & Trailer Infrastructure Upgrades*** • Upgrade Water, Wastewater, Telecommunications and Electrical Service to Trailers for Additional Capacity • Purchase Trailers for Additional Production Office/Creative Media Tenant Space
8**	Vehicular & Infrastructure Connection, Drainage Improvements*** • Create Vehicular and Infrastructure "Bridge" to former Armory site, Reconstruct & Enhance Drainage Swale
9**	Renovation of former National Guard Armory including Code Compliance & Infrastructure Upgrades • Upgrade Building's Core Systems, including utilities service, restrooms, roof replacement, and life safety • Create Critical Infrastructure for Creative Media Hub and Production Tenants
10	Vehicular & Infrastructure Connection, Security & Wayfinding Improvements*** • Create Vehicular Connection to future Tilley Street, Connect Utilities to Tilley Street • Install Fencing and Automatic Gates with Key-Card Access, Install Monumental and Directional Signage

*Concept Diagram for planning purposes only and is subject to change as site boundaries and designs are finalized.

**Denotes activities that are anticipated to be completed in a first phase.

***Implementation of these items is subject to determination of final lease boundaries.

5 June 2014

2126264.2

EXHIBIT "C"

PROJECT BUDGET

	Project Budget	CCRI Eligible
Project Management	$ 216,000.00	Yes
Design Services	$ 578,800.00	Yes
Permits and Fees	$ 18,671.00	No
Project Inspection Fees	$ 52,728.00	Yes
Construction Services	$3,833,926.00	Yes
Art in Public Places	$ 104,000.00	Direct City Expense
Debt Issuance (City)	$ 30,000.00	Direct City Expense
Furniture, Fixtures and Equipment	$ 184,546.00	Yes
Subtotal Project Budget	$5,018,671.00	
Project Contingency	$ 400,000.00	Yes, as it relates to CCRI items
TOTAL PROJECT BUDGET	$5,418,671.00	
Austin Film Society Contribution (Permits)	$ 18,671.00	
Total Bond Funds	$5,400,000.00	

EXHIBIT "D"

INSURANCE AND BOND REQUIREMENTS

NOTE: When the term "construction manager" is used in this Exhibit it means the person or entity hired by Austin Film Society to perform construction management services, whether through the construction manager at risk procurement method or other delivery method.

A. General Requirements

Austin Film Society shall forward certificates of insurance with the endorsements required below to the City as verification of coverage within 5 calendar days after the date this Agreement is executed (unless provided otherwise below), EXCEPT that Austin Film Society shall have in place a policy of commercial general liability insurance meeting the requirements of their 2009 Lease during the entire lease term.

Austin Film Society's permanent buildings are insured on the City's property insurance policy. Austin Film Society shall contact the City's Risk Management Division for scheduling and other information related to the required use of the City's property insurer's plan review services for the construction of any Improvements to be made pursuant to the Agreement. Contact must be made no later than when the design drawings are 50% complete.

Austin Film Society shall not commence work on the Project until the required insurance is obtained by the construction manager and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of Austin Film Society and is not a limitation of liability on the part of Austin Film Society.

Austin Film Society must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of work on the Improvements to be made pursuant to the Agreement and for all A/E and other professionals prior to the commencement of work under their respective agreements.

Austin Film Society's, and all engineers/architects and Project Management consultants (professionals), contractor's, and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better or otherwise be approved by the City. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: City Project Manager Economic Development Department
City of Austin
P. O. Box 1088
Austin, Texas 78767-1088

The "other" insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Exhibit, covering both the City and Austin Film Society, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Exhibit, Austin Film Society, the construction manager, or other professionals, contractors, and subcontractors of Austin Film Society must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the Parties hereto or the underwriter on any such policies.

Austin Film Society shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement (Term) without providing a substantially equivalent policy of insurance or coverage in replacement thereof.

The Professionals, and any contractor, or subcontractor responsible for maintaining insurance pursuant to this Agreement shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth in this Exhibit to the Agreement during the period of construction and until Final Completion plus the period for all construction warranty work and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies), Austin Film Society, professionals, contractors, or subcontractors.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Austin Film Society, the professionals, contractors or subcontractors of Austin Film Society.

B. Specific Requirements

Worker's Compensation and Employers' Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are $1,000,000 bodily injury each accident, $1,000,000 bodily injury by disease policy limit and $1,000,000 bodily injury by disease each employee.

(a) Austin Film Society's, its professionals', contractors', and subcontractors' policy shall apply to the State of Texas and include these endorsements in favor of the City:

(i) Waiver of Subrogation, Form WC 420304, or equivalent coverage.

(ii) Thirty days' Notice of Cancellation, Form WC 420601, or equivalent coverage.

Commercial General Liability Insurance. If not previously provided under the Lease by Austin Film Society for itself, Austin Film Society, any professionals, including the A/E team, the construction manager and other contractors shall provide the minimum bodily injury and property damage per occurrence are $1,000,000 for coverages A and B.

(a) The policy must contain the following provisions:

(i) Blanket contractual liability coverage for liability assumed under this Agreement and all contracts related to this Project.

(ii) Independent contractor's coverage.

(iii) Products/completed operations liability for the duration of the warranty period.

(b) The policy must also include these endorsements in favor of the City:

(i) Waiver of Subrogation, endorsement CG 2404, or equivalent coverage.

(ii) Thirty days' notice of cancellation, endorsement CG 0205, or equivalent coverage.

(iii) The City listed as an additional insured, endorsement CG 2010, or equivalent coverage.

Business Automobile Liability Insurance. Austin Film Society, its professionals, contractors, and subcontractors shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage.

(a) The policy must include these endorsements in favor of the City:

(i) Waiver of subrogation, endorsement CA 2046, or equivalent coverage.

(ii) Thirty days' notice of cancellation, endorsement CA 0244, or equivalent coverage.

(iii) The City listed as an additional insured, endorsement CA 2048, or equivalent coverage.

If these specific endorsements are not available, evidence of equivalent coverage shall be provided to the City. If neither the endorsement or equivalent coverage is available, a written statement to that effect from the carriers underwriter shall be provided to the City for approval. Acceptance of the statement shall not be reasonably withheld by the City.

Other Insurance. Other insurance shall be maintained by Austin Film Society as required in the Lease.

Builders Risk Insurance. During the construction of the Improvements to be completed pursuant to the Agreement, or any subsequent construction or repair of the Improvements, Austin Film Society shall require its contractor to maintain an all risk builders risk insurance policy in the amount of the construction contract or construction manager contract, as the case may be. The policy must name the City as mortgagee/loss payee as its interest may appear.

Hazardous Material Insurance. For work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

(a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of $1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of $1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Austin Film Society and the City.

(b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a $5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a $1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of $1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a $1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

(c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Austin Film Society and the City.

Professional Liability Insurance. In addition to the workers compensation, business auto liability and commercial general liability coverage requirements above, all contractors providing professional services shall provide Professional Liability Insurance to pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages by reason of

any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for 30 day notice of cancellation in favor of the Austin Film Society and the City. The minimum limit of liability for this coverage shall be $1,000,000.

Performance and Payment Bonds. Austin Film Society shall require its general contractor or construction manager, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Improvements, to furnish and deliver to the City, legally issued surety bonds in a form approved by the City and in compliance with the Texas Government Code, with the City and Austin Film Society named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Improvements and, upon the failure of the construction manager to so furnish and deliver all of the same in form, tenor and execution and with sureties reasonably satisfactory to the City, no rights obtain thereunder to the construction manager, no construction of the Improvements being completed pursuant to the Agreement may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and Austin Film Society will be in material default under the Agreement.

Payment Bond. Austin Film Society shall require the construction manager to provide a payment surety bond legally issued, meeting the approval of the City, in an amount not less than 100% of the total contract price of the construction costs of the Improvements, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. Austin Film Society shall require the construction manager to provide a performance surety bond legally issued, meeting the approval of the City, in an amount not less than 100% of the total contract price of the construction costs of the Improvements, conditioned upon the prompt, full and complete performance by the construction manager of these covenants and agreements contained in the contract documents.

Nothing in this Exhibit is intended to overlap or be duplicative of the insurance currently carried by Austin Film Society.

EXHIBIT "E"

MILESTONE DELIVERABLES

Pre-Design Phase

- Consultant M/WBE Compliance Plan

Schematic Design Phase

- Schematic Design Drawings And Outline Project Manual
- Updated Project Budget And Schedule
- Schematic Design Phase Construction Cost Estimate
- Updated LEED Checklist
- M/WBE Compliance Report

Design Development Phase

- Design Development Drawings And Project Manual
- Updated Project Budget And Schedule
- Design Development Phase Construction Cost Estimate
- Updated LEED Checklist
- M/WBE Compliance Report

Construction Document Phase @ 50% Complete

- 50% Complete Construction Document Phase Drawings And Project Manual
- Updated Project Budget And Schedule
- 50% Construction Document Phase Construction Cost Estimate
- Updated LEED Checklist
- M/WBE Compliance Report

Construction Document Phase @ 100% Complete

- 95% - 100% Complete Construction Document Phase Drawings And Project Manual
- Updated Project Budget And Schedule
- 100% Construction Document Phase Construction Cost Estimate
- Updated LEED Checklist
- M/WBE Compliance Report

Construction Phase

- Executed Construction Agreement
- Monthly Construction Progress Reports, Updated Schedules And LEED Documentation
- M/WBE Compliance Report
- Record Documents at Final Completion

Post Construction Phase

- 6 Month and 12 Month Warranty Reports